Public International- SEM 7-1

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7TH SEMESTER PUBLIC INTERNATIONAL LAW NOTES

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PUBLIC INTERNATIONAL LAW

Q. Define International Law and explain the different theories on the question as to what is the basis of International Law.

International law is differently known as the law of Nations, international law, public international law, transitional law, interstate law, the law of the community of states or universal international law. International Law or the law of nations is the system of law, which governs relations between states. At one time states were the only bodies which had rights and duties under International Law, but now-a-days international organizations, companies, and individuals also sometimes have rights and duties under International Law, however, it is still true to say that International Law is primarily concerned with sates. The term international law has been defined in a variety of ways by different jurists. Some of the definitions may be given as under:

By Oppenheim: "Law of Nations or international law is the name for the body of customary law and conventional rules which are considered binding by civilized states in their intercourse with each other.**"**

J.L Brierly: "The laws of nations or international law may be defined as the body of rules and principles of action which are binding upon civilized states in their relation with other states"

By Alf Ross: Alf Rose defines the term international law as under:

"International law is the body of legal rules binding upon states in their relations with one another.**"**

By Lawrence: According to him, **"**international law is the rule which determines the conduct of the general body of civilized state in their mutual dealings.**"**

Modern Definition: - International law has always been in a continuous state of change. In modern period the term International law may rightly be defined as under;

"That body of legal rules which regulates the relationship of the Nation States with each other, as well as, their relationship with other International actors.**"**

BASIS

Austin in his definition of law has given more importance to sanction and fear in compliance of law. In case of International law there is neither sanction nor fear for its compliance hence it is not law in proper sense of the term. But now the concept has changed and International Law is considered as law. There is no consideration of fear or sanction as essential part of law. If fear and sanction are considered necessary then there are sufficient provisions in UNO charter for compliance of the International Law as Law :-

According to Bentham's classic definition international law is a collection of rules governing relations between states. Two of the most dynamic and vital elements of modern international law.

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1. In its broadest sense, International law provides normative guidelines as well as methods, mechanisms, and a common conceptual language to international actors i.e. primarily sovereign states but also increasingly international organizations and some individuals.

2. Although international law is a legal order and not an ethical one it has been influenced significantly by ethical principles and concerns, particularly in the sphere of human rights. International is distinct from international comity, which comprises legally nonbinding practices adopted by states for reasons of courtesy. e.g. the saluting of the flags of foreign warships at sea.)

According to Oppenheim, International Law is law in proper sense because:-

- In practice International Law is considered as law, therefore the states are bound to follow them not only from moral point of view but from legal point of view also.
- When states violate international law then they do deny the existence of international law but they interpret them in such a way so that they can prove their conduct is as per international law.
- **Starke** while accepting International Law as Law has said, "that in various communities law is in existence without any sanction and legal force or fear and such law has got the same acceptance as the law framed and enacted by state Legislative Assemblies.
- With the result of international treaties and conventions International Law is in existence.
- U.N.O. is based on the legality of International Law. According to**Prof.Briely**, "To deny the existence and legal character of International Law is not only inconvenient in practice but it is also against legal thoughts and principles."
- The states who are maintaining the international relations not only accept International Law as code of conduct but has also accepted its legal sanction and force. **Prof. Hart**, "There are many rules in practice which are honoured by states and they are also bund by them, now the State Government accept the existence of International Law." **According to Jus Cojens, "**International Law may now properly be regarded as a complete system."

It is pertinent to mention here that from the above noted contents it is clear that the following grounds are supportive for accepting the International Law as law:-

Now so many disputes are settled not on the basis of moral arguments but on the basis of International Treaties, precedents, opinions of specialists and conventions.

- States do not deny the existence of International Law. On the contrary they interpret International Law so to justify their conduct.
- In some states like USA and UK international Law is treated as part of their own law. A leading case on the point is the, **Paqueta v Habanna, 1900**. Justice Gray observed that the international law is a part of our law and must be administered by courts of justice."
- As per statutes of the International Court of Justice, the international court of Justice has to decide disputes as are submitted to it in accordance with International Law.
- International conventions and conferences also treat international Law as Law in its true sense.
- The United Nations is based on the true legality of International Law.
- That according to **Article 94 of UNO charter**, the decisions of the International Court of Justice are binding on all Parties (States).

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- Customary rules of International Law are now being replaced by law making treaties and conventions. The bulk of International Law comprises of rules laid down by various law-making treaties such as, **Geneva and Hague conventions**.

On the basis of above mentioned facts and arguments, the International Law is law in true sense of the term. United States and U.K., treat International Law as part of their law. In a case of **West Rand Central Gold Mining Company Ltd., v/s Kind- 1905,** the court held the International Law has considered it as a part of their law. From the above analysis it is revealed that the International Law is law. The International Law is law but the question arises as to what are the basis of International Law. There are two theories which support it as real law:-

1. **Naturalist Theory:** The Jurists who adhere to this theory are of the view that International Law is a part of the Law of the Nature. Starke has written, "States submitted to International Law because their relations were regulated by higher law, the law of Nature of which International Law was but a part." Law of nature was connected with religion. It was regarded as the divine Law. Natural Laws are original and fundamental. They incorporate the will of the Governor and governed and advance their consent or will. That is why international law is also based on natural law.

Vattel Furfendorf, Christain, Thamasius, Vitona are the main supporters of this theory. It was viewed that natural law is uncertain and doubtful but it is accepted that Natural Law has greatly influenced the growth and has given the birth to International Law and its development. Most of its laws are framed from Natural Law.

2. **Positivist Theory**: This theory is based on Positivism i.e. law which is in the fact as contrasted with law which ought to be. The positivists base their views on the actual practice of the states. In their view customs and treaties are the main sources of International Law. **According to German economist, Heagal**, "International Law is the natural consent of states. Without the consent of states, no law can bind the states. This consent may be express or implied." As pointed out **by Starke**, " International Law can in logic be reduced to a system of rules depending for their validity only on the fact that state have consented to them." As also pointed **by Brierly**, "The doctrine of positivism teaches that International Law is the sum of rules by which states have consented to be bound." As said by Bynkeshock, "The basis of International Law is the natural consent of the states. Without the consent of states no law can bind the states."

The critics of the above views say that consent is not always necessary for all laws. There are some laws which are binding on states irrespective of their consent e.g. Vienna Convention on the Law of Treaties. Article 36 of the Treaty says that the provisions of the Treaty may be binding on third parties even if they have not consented to it.

CONCLUSION: **Gossil Hurst** says, "That International Law is in fact binding on states, because they are states." This is very much correct because every state in the world wants peace, Law and order and that is possible only through existence of International Law. Therefore it is in natural interest of States to accept the existence of International Law.

Q. Discuss the nature of International law.

Nature of International Law: In order to understand the nature of international law we must understand weather International law is law in true sense or not?

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The status of International law, that whether it is a law in true sense or not, is a long debate. Jurists have different views to debate as a result of which different schools of thought have come to exist. The view of each of such school may be given as under:

International law is not a law in true sense: Hobbes, Austin, Jeremy Bentham are prominent jurists who deny the ideal character of International Law. According to this school of thought International law is not a law in true sense. They give following arguments in support of their view:

i. There is no superior political authority ii. There is no

legislature to enact the rules as in municipal law, iii. There is

no judicial machinery to interpret the laws, iv. There is no

executive authority to enforce international law

v. International law is frequently violated by states.

So, on the basis of the above arguments this school of thought has contended that international law is not a law in its true sense.

International law is a law in true sense: Oppenheim, Brierly, Prof. H.L.A Hart and J.G Starke are these jurists who regard International Law as really law. According to this school of thought international law is a law in true sense. They give the following arguments in support of their view:

i. For the definition of law a political superior authority is not so necessary, ii. In

fact there is a legislative body in the shape of General Assembly and Security

Council and the states enter into treaties which also act as legislature, iii. In fact

there is potent judicial machinery in the shape of International Court of

Justice (IJC). Though its decisions are binding on the parties when they by their mutual consent refer the case to it.

iv. It is wrong to say that there is no executive authority to enforce International law, because the adverse view of the member states and fear of cessation of diplomatic and economic ties and fear of war act as sanction for its implementation.

v. It is right to say that international law has frequently been violated but on this basis the status of international law as a law shall not be denied because law is law and its obedience is totally another factor. And municipal law has also been violated. vi. Furthermore, states themselves consider it binding upon them.

International law is a law but a weak law: This school of thought accepts the status of International law as a law but according to them it is a weak law. They give following arguments in the support of their view: i. There is no coercive agency to enforce it, ii. It has frequently been violated, iii. Big powers interpret it according to their wishes,

iv. Though there is an international court of justice, but it enjoys no compulsory jurisdiction. Its decisions are only binding in circumstances where both the parties by their mutual consent refer the case to it,

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v. There are some sanctions to enforce it but the same are to inadequate to attain the end of international justice.

Conclusion: From the above discussion it may be concluded the international law is a law but a weak law due to many technical defects in it.

Q. According to Holland "International Law is the vanishing point of Jurisprudence- Explain.

Holland has remarked that International Law is the vanishing point of jurisprudence in his view , rules of international law are followed by courtesy and hence they should not be kept in the category of law. The international Law is not enacted by a sovereign King. It has also no sanctions for its enforcement which is the essential element of municipal law. Holland further say that International Law ass the vanishing point of Jurisprudence because in his view there is no judge or arbiter to decide International disputes and that the rules of the I. Law are followed by States by courtesy.

Austin also subscribes to this view, **Justice V. R. Krishna Iyer** formally member of Indian Law Commission has also remarked, "It is a sad truism that international law is still the vanishing point of jurisprudence. This view is not correct. It is now generally agreed that Holland's view that **international law is the vanishing point of jurisprudence is not correct.**

But now it is well settled that International Law is law. It is true that International Law is not enacted by sovereign and has no agency for its enforcement. But it is true that it is a weak law. A majority of International lawyers not subscribe to this view is based on the proposition that there are no sanctions behind international Law are much weaker than their counterparts in the municipal law, yet it cannot be successfully contended that there are no sanctions at all behind international law.

The jurists who do-not consider international law as the vanishing point of jurisprudence say that there is difference between state law and International Law. International Law cannot be enacted by the state but still there is agency for its enforcement. **According to Dias**, "International Law is obeyed and complied with by the states because it is in the interests of states themselves."

For this object they give the following arguments:

1. The judgements of International court of Justice are binding on States.
2. If any state does not honour the order/judgement of International court of justice, the Security Council may give its recommendation against that state for action.
3. The judicial powers of International Court of justice (Voluntarily and compulsory) have been accepted by the States.
4. The judgement of International court of Justice has been followed till date.
5. The system of enforcement i.e. sanctions and fear, has been developed.

For example :- If there is a threat to international peace and security, under chapter VII of the U.N. Charter, the security council can take necessary action to maintain or restore international peace and security. Besides this the decisions of the International Court of Justice are final and binding upon the parties to a dispute.

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The gulf war 1991 Iraq trespassed and acquired the whole territory of Kuwait in her possession by violation of International Law. The Security Council passed a resolution against Iraq and asked her to liberate Kuwait. But Iraq did not honour the resolution of Security Council; hence therefore may economic and political restrictions were composed against Iraq. But all in vain. Then USA and her allies were permitted to compel Iraq to honour resolution of Security Council. Consequently USA and her allies used force against Iraq and freed Kuwait.

The same action was taken against North Korea and Congo during the year 1948 and 1961. The Security Council imposed penalty against Libya for shooting down American Plane in Lockerbie (Scotland) in 1992, consequently two citizens were also killed. The Security Council forced Libyan Government to surrender two terrorists who were involved in this mishap and Libya obeyed the order of S. Council.

The greatest proof of its utility and importance is the fact that its successor the International Court of Justice established under the United Nations charter is based on the Statute of the Permanent Court of International Justice, the United Nations & Security Council Charter possess wide powers to declare sanctions against the states who are guilty of violence of the provisions of the same under chapter-VII

Thus International Law is in fact a body of rules and principles which are considered to be binding by the members of International Community in their intercourse with other. The legal character of International Law has also been recognized in 1970 Declaration on the Principle of International Law Concerning Friendly relation and Cooperation among states.

Conclusion:- On the basis of above discussion it may be concluded that the International Law is in fact law and it is wrong to say that it the vanishing point of Jurisprudence.

Q. Discuss the various sources of International Law.

A source of International law means those origins from where it attains its authority and coercive agency. According to the provisions of the Statute of International Court of Justice there are following sources, on the basis of which Court can decide a case:

1. Treaties: The term treaty may be defined as **"**the agreement entered into by Nation states for their relations with each other and to undertake certain duties, obligations and rights is said to be a treaty.**"**

The statute declares that the Court shall have to decide any dispute between nation States in accordance with the provisions of the treaty between them if existed. International treaties may be of two types:

i. Law making treaties: Law making treaties are the means through which int. law can be adapted to in accordance with the changing times and circumstances and the rule of law among the states can be strengthened. Law making treaties may again be divided into following two types:-

a) Treaties enunciating rules of universal international law.

b) International treaties which lay down general principles.

ii. Treaty contracts: Treaty contracts are entered into by two or more states. The provisions of such treaties are binding only on the parties to the treaty. Such treaties also help in formulation of international law.

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2. International Customs: International customs have been regarded as one of the prominent sources of international law for a long period of time. Article 38(b) of the statute of international court of justice recognizes "international custom", as evidence of general practice accepted as law, as one of the sources of international law. Customs are those habits and practices which the nation states commonly observe and the violation of which is considered as against the courtesy of International behavior. There are certain practices which the world community observes without any express provisions but because of practice they honour the same. So if there is no treaty between the parties to a dispute then the statute binds the Court to decide the case in the light of such international customs.

3. General Principals of Law Recognized by Civilized Nations: There are certain principles of law, which have been incorporated, in the domestic laws of many countries because of their universal application. So, in default of any treaty or international custom the statute reveals that the court then shall have to decide the case in the light of such general principles of law as recognized by civilized nations of the world.

4. Judicial Decisions: Usually the Judicial decisions of the International Court of Justice are not binding and they have no value in the sense that they are related and binding only to that certain case for which they have given. And they cannot be cited as strict reference in any other case. But despite the fact the Statute reveals that in case of default of all the above sources the court shall resort to the prior judicial decisions. We can say judicial decisions are subsidiary and indirect sources of international law.

5. Juristic Works: The jurists or publicists also declares rules by legal philosophy and analogy and also by comparing different legal systems of the world and they also analyze the historical perspectives of the different legal systems of the world. So, as they have devoted their lives for the legal study, they must be deserved to consult in deciding a dispute. In other words, their opinion on a specific question of law weights because of their valuable experiments and sound study on the topic. So, the statute further reveals that if there is no treaty, legal custom and general principles of law then the Court shall resort to writings of these jurists.

6. Equity: Equity is used in the sense of consideration of fairness, reasonableness and policy often necessary of the sensible application of the more settled rule of law. Though equity cannot be the direct source of International Law, It is of great importance in those fields where rules are not readily available. Some jurist says that it is not the formal source of law but it is a source of law. Equity principles originate from culture and interest of State concerned, equity principles varies from State to State. Equity in international law is uncertain. It is subjective, and to bring objectively to the principles of equity as a principle of natural law are considered. The Concept of Equity has been referred to in several cases.

7. Decision or determinations of the organs of International Institutions: In the modern age the decisions or determination of the organs of international Institutions are also treated as sources of International Law. In the view of constant change in the forms and content of the International Law, International organizations have also became a subject of International law. The decisions and determination of the organs of such institution are also, therefore, regarded as the sources of International Law because they help in the development of customary rules of International Law

Q. Discuss the subjects of International law. Can an individual be the subject of International Law.

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Theories on Subjects of International Law

By subjects of international law it is meant that those entities which possess international personality. In other words subjects of international law are those entities that have rights duties and obligations under international law and which have capacity to possess such right, duties and obligations by bringing international claims. In past the matter was not much debatable because according to the contemporary circumstances and scope of international law only the states were qualified for international personality, but in near past along with the increasing scope of international law many other entities have been given international personality. Now, the question arises; whether they may be treated as subjects of international law or not? And also if they were given the international personality then what shall be the criteria for ascertaining the qualification of their being the subjects of international law. So, there are different theories as regard to the above debate. The most prominent theories may be discussed as under:

1. **Realist Theory: –** According to the followers of this theory the only subject of the international law are the Nation States. They rely that Nation States are the only entities for whose conduct the international law came into existence. The Nation States, irrespective to the individuals composing them, are distinct and separate entity capable to have rights, duties and obligations and can possess the capacity to maintain their right under international law. So, the Nation States are the ultimate subjects of International law.

2. **Fictional Theory: –** According to the supporters of this theory the only subjects of international law are the individuals. For the reason, that both the legal orders are for the conduct of human being and for their good well. And the Nation States are nothing except the aggregate of the individuals. Though the rules of international law relate expressly to the Nation States but actually the States are the fiction for the individuals composing them. Due to this reason individuals are the ultimate subjects of International law.

3. **Functional Theory: –** Both the Realist and Fictional theories adopted the extreme course of opinions. But Functional theory tends to meet both the extremist theories at a road of new approach. According this theory neither states nor individuals are the only subjects. They both are the subjects of modern international law. Because for states being primary and active subject of international law have recognized rights, duties and obligations under international law and are capable to maintain the same by bringing international claim. At the other hand in the modern international law individuals have also granted certain rights, duties and obligation under international law and maintain the same by bringing direct international claims. Even, not only states and individuals are the subjects of international law but several other entities have been granted international personality and became the subjects of the international law. This is because of the increasing scope of international law.

Conclusion: – If all the above theories are to be analyzed philosophically then it may be concluded that Functional Theory seems to be more accurate because due to modern scope of the international law and world trend. It is obvious that there are many actors in international law, which have been granted rights, duties and obligations, and also to secure their rights and have been provided with capacity to bring international claims. So along with states and individuals neither, certain other entities which have been given international personality shall be treated as subjects of international law but also all those new entities which with due course of time are going to be given international personality.

State alone are subjects of International Law.

Primarily, International Law is concerned with the rights duties and interests of States. As 'International law' is between or among the States, some jurists hold the view. **that 'only the State are the subjects of International law'.**

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Subjects of International Law means:

1. Incumbent of International rights and duties :

2. Possessor of procedural privileges of suing in International Courts and Tribunals :

3. Possessor of interests under International law.

4. Capacity to enter into treaties & International obligations.

EXCEPTIONS :

i) Though it. is the conduct of the state that is regulated by international law, in the ultimate analysis it is the conduct of the individuals that is regulated. As Westlake opines 'The rights & duties of the States are ultimately the rights and duties of-men. that compose them. Hence, though the States are normal subjects, they may endow the individuals with the International rights and duties and to that extent make them subjects of International law.

ii) **Pirates** who commit Piracy Jure Gentium on the high seas are liable to punishment under International law. To that extent they are the subjects of International law,, but some jurists call them as objects.

iii) **Slaves** : International convention has provides for the abolition of slavery. The convention also provides for the rights of the, slaves. They enjoy these rights as subjects of International law.

iv) **Belligerents:** are subject to International rights and duties in respect of war. Hence, they are subjects of International law. e.g. Geneva Conventions on the Prisoners of war apply to them.

v) **Individuals:** May be allowed to appear before the International tribunals, like ICJ. In Danzsig officials case, the ICJ. has opined that individuals may be conferred with certain rights by States.

vi) **War Criminals:** The Nirenberg and Tokyo trials after II World War showed that individuals could be tried for International crimes like crimes against peace, crimes against humanity and crimes under the law of War. *Eichmann's Trial* fortifies the above position. The Nuremberg- Trial rightly stated that crimes against International law are committed by men not by abstract entities (States) and only by punishing individuals who commit crimes, can the provisions of International, law be enforced.

vii) **Genocide Convention:** This provides for punishment of those who commit genocide, the punishment may be awarded by National or International courts.

viii) European Commission for Human Rights has been empowered to investigate and to report on violation of' human rights by the Member States. The *Lawless case* decided by the European Court of Human Rights is an example.

ix) **United Nations**: The I. C. J. in the *Reparations case* held that the United Nations is an International person. It is also 'declared as the subject of International law, capable of International rights and obligations.

x) The Specialised Agencies like I.L.O., U.P.U., are International persons and hence the subjects of International law as per their Constitutions.

xi) **Regional Arrangements:** Like the NATO., SEATO., etc. are also endowed with International personality. Hence they are also subjects of International law in a limited.

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These factors evidently prove that apart from Sovereign States, there are others which are also the subjects though '.in a limited sense. It is no doubt true that States are mainly the subjects, as the capacity to follow International obligations, is on them primarily.

Individuals as a subject of International Law

The position of subjects of international law has greatly changed with the passage of time. Some Jurists have expressed the view that only states are the subject of International Law. In their view, International Law regulates the conduct of the State and only States alone are the subject of international law. According to them and as per the positivism view individual is an object and not a subject of International law.

But it is wrong to say that individuals are not the subjects of international law. Some Jurists are of the view that individuals who are the basis of the society and are the subject of International Law and not the object of the International Law. The International Court of Justice has rejected the proposition that the states are the only subject of international law, and held that the states are responsible for an act of his agent. As per the modern international law, it is generally recognized that besides States, Public International Organization, Individual and certain other non-state entities are also the subjects of international law. Under the International Law duties of the states are ultimately the duties of an individual, and there is no difference between International Law and State law. As per Kelsen, both laws apply to the individual and they are for the individuals. In present times several treaties have conferred upon individuals rights and duties. for example International convention on human rights. In Danzing Railways official case, 1928 Permanent Court of Justice held that if any treaties the intention of the parties is to enforce certain rights upon some individuals, then International Law will recognize such rights and enforce them.

A new trend has started in the international field under which some rights has conferred upon individuals even against the States. for example European convention on human rights,1950, International convention on human rights 1966, optional protocol, by which an individual who is the victim of the violation of human rights, May send petition regarding violation of human rights by his own state to the United Nations Commission on Human rights. It is now agreed that International organizations are also the subject of international law. United Nation is an international person under international law and it is held by International Court of Justice that United Nation is a subject of international law and capable of possessing rights and duties and it has the capacity to maintain its right by bringing International things.

Q. Discuss the Monism and Dualism theories relating to the relationship between International law and Municipal law.

In order to understand international law properly, it is necessary to understand the relationship between international law and municipal law. Municipal law regulates the conduct of persons living within the territory of the state whereas international law generally regulates the relations among states. Apparently there seems no relationship between international law and municipal law. Bet if examined with philosophical eve then it would be seemed that there is a relationship between both the legal orders.

Relationship between Municipal Law and International Law: As to relationship between municipal law and international law there are many theories the most prominent one of which may be discussed as under:

I. Monistic Theory: The exponents of this theory emphasis the scientific analysis of the international structure of law. According to them, law is a unified branch of knowledge no matter whether it applies on person or other entities. They believe International law is not distinct and autonomous body of law, rather there exists only

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one sets of legal system i.e. the domestic legal order. They have criticized the view adopted by Dualists, and also rejected the alleged distinction between Municipal law and International law as pointed out by the dualists. According to them both the international law and municipal law are related with the same legal system. And it is not possible to treat them severely. Wright, Kelsen and Duguit, etc. are some of the prominent exponents of monist theory.

II. Dualistic Theory: According to the dualist writers Municipal law and International law are two separate, distinct and self-contained legal orders, independent from each other. Both the orders enjoy its own spheres and each one is the supreme in its own sphere. They accept the separate and independent existence of municipal law and international law. Thus dualist theory is based on complete sovereignty of states. The chief exponents of this theory are ***Triepel*** and ***Anzilloti***. Triepel has pointed out the following differences between municipal law and international law;

a) Regarding subject: individual is the subject of state laws or municipal laws, whereas state is the subject of international law.

b) Regarding origin: origin of the municipal law is the will of the state whereas origin of international law is the common will of states.

Conclusion: It may be concluded that as for as, the Dualistic and Monistic Theories are concerned they are primitive and traditional, due to which they are most popular. Although no theory can be said to be appropriate. The practice of states indicates that sometimes there is primacy of international law, sometimes there is primacy of municipal law and sometimes there is mixture of different legal system.

Q. Bring out the distinction between international law and municipal law.

In principle, International Law operates only at the International level and not within Municipal legal systems—a perspective consistent with positivism, which recognizes International Law and Municipal Law as distinct and independent systems. Conversely, advocates of natural Law maintain that Municipal and International Law form a single legal system, an approach sometimes referred to as monism. Such a system, according to monists, may arise either out of a unified ethical approach emphasizing universal human rights or out of a formalistic, hierarchical approach positing the existence of one fundamental norm underpinning both International Law and Municipal Law.

International Law and Municipal Law have traditionally addressed relatively different issues. International Law is largely but not altogether concerned with relation among states; whereas Municipal Law controls relations between individuals within a state and between individuals and the state.

Also, they differ altogether in their judicial processes. Both are usually applied by National court, which results in complete decentralization of the judicial function in International Law and effective centralization in Municipal Law. What is true of the judicial function is also true of the executive function. As in tort in Municipal Law, traditional International Law always depended for its enforcement upon the initiative of the injured party. Most Municipal Law, on the other hand, is enforced by a responsible executive unknown to International Law.

According to Oppenheim, The Law of Nations and the Municipal Law of the single States are essentially different from each other. They differ, *first, as regards their sources. Sources of Municipal Law are custom grown up within the boundaries of the respective State and statutes enacted by the Lawgiving authority. Sources of International Law are custom grown up within the Family of Nations and Lawmaking treaties concluded by the members of that family*.

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The Law of Nations and Municipal Law differ, secondly, regarding the relations they regulate. Municipal Law regulates relations between the individuals under the sway of the respective State and the relations between this State and the respective individuals. International Law, on the other hand, regulates relations between the member States of the Family of Nations.

The Law of Nations and Municipal Law differ, thirdly, with regard to the substance of their Law: whereas Municipal Law is a Law of a Sovereign over individuals subjected to his sway, the Law of Nations is a Law not above, but between Sovereign States, and therefore a weaker Law.

Even though International Law requires a State to carry out its International obligations, in general, the processes used by a State to carry out its International obligations will vary for example, from legislative, executive and/ or judicial measures. States also follow different practices in internationalizing treaty norms that is incorporating treaties within the state's legal structure so that the provisions can be implemented by state authorities.

In some countries, International (and at times regional) human rights Law automatically becomes a part of National Law. In other words, as soon as a state has ratified or acceded to an International agreement, that International Law becomes National Law. Under such systems treaties are considered to be self executing.

In other countries, International human rights Law does not automatically form part of the National Law of the ratifying state. International Law in these countries is not self executing, that is, it does not have the force of Law without the passage of additional National legislation.

International Law and Municipal Law are similar in their sources, chiefly customs and express agreements with however substantial differences in legislative machinery. In fact, in recent times however, it cannot be denied that there is gradual convergence of interest and the ultimate goal of both is to secure the well being of individuals. Areas where this common goal manifests itself include human rights Law, environmental Law and commercial Law, areas where there is increasing interaction between National Law and International Law.

Q. Discuss State as subject of International law. Elucidate its rights and duties. Discuss Territorial sovereignty and modes of acquiring and losing territory by State.

A State as a Subject of International Law

In general, a subject (a person) of law is an entity to whom the law provides rights and assigns obligations. The requirements to be met for an entity to be considered a subject of International Law are the ability to have rights and obligations under International Law, the capacity to enter into relations with other subjects and to stand before international courts. States are, in this sense, clearly subjects of International Law since they fulfill all of these requirements.

A State is the primary legal subject (person) in International Law. A State, by evidencing a separate legal and corporate personality, fulfills the basic requirement for the entrance into the community of nations. For an entity to be a State, it should be free from political control of another State and be free to enter into relations with other States.

What is a State? What are the criteria of statehood? What are the rights and duties of a State? The answers to these questions are dealt with in the following sections.

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Definition and Requirements of Statehood

There is no exact definition of the term "State" in International Law. However in this law, the essential criteria for statehood are well settled. Article 1 of the Montevideo Convention on the Rights and Duties of States of 1933 provides the following:

The state as a person of international law should possess the following qualifications: a.

a permanent population;

b. a defined territory;

c. government; and

d. capacity to enter into relations with other States.

According to this article an entity to be a person of International Law, it should fulfill the enumerated qualifications which are regarded as the essential requirements or characteristics of statehood. However, these requirements are not exhaustive; other requirements may be relevant including sovereignty, independence, selfdetermination and recognition; these requirements are considered in correlation of the essential requirements. All these requirements are considered below.

(a) A Permanent Population: The existence of a permanent population is naturally required as an initial evidence of the existence of a State. This requirement suggests a stable community. Evidentially it is important, since in the absence of the physical basis for an organized community, it will be difficult to establish the existence of a State. The size of the population, however, is not relevant since International Law does not specify the minimum number of inhabitants as a requirement of statehood. Nevertheless, an acceptable minimum number of inhabitants is required with regard to self-determination criterion.

(b) A Defined Territory: The requirement of a permanent population is intended to be used in association with that of territory. What is required by a defined territory is that there must be a certain portion of land inhabited by a stable community. A defined territory does not suggests that the territory must be fixed and the boundaries be settled since these are not essential to the existence of a State, although in fact all modern States are contained within territorial limits or boundaries.

The past practice shows that the existence of fully defined boundaries is not required and that what matters is the existence of an effective political authority having control over a particular portion of land. In 1913, Albania was recognized as a State by a number of States even though it lacked settled boundaries, and Israel was admitted to the United Nations as a State in spite of disputes over its existence and territorial delineation.

The existence of a particular territory over which a political authority operates is essential for the existence of a State. For this reason, the "State of Palestine" declared in November 1988 at the conference of Algiers was not legally regarded as a valid State since the Palestine Liberation Organization had have no control over any part of the territory it was claiming.

The size of the territory of a State and alterations to its extent, whether by increase or decrease, do not of themselves change the identity of that State. A State continues to exist as long as a portion of land is retained.

(c) A Government: For a stable community to function reasonably effectively, it needs some sort of political organization. It is required that an effective government be created, and this political authority must be strong

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enough to assert itself throughout the territory of the State without a foreign assistance. The existence of an effective government, with some sort of centralized administrative and legislative organs, assures the internal stability of the State, and of its ability to fulfill its international obligations.

However, the requirement related to the existence of an effective government having control throughout its territory although strictly applied in the past practice, it has been subjected to certain modification in modern practice. In certain cases, the requirement of an effective government was not regarded as precondition for recognition as an independent State. The State of Croatia and the State of Bosnia and Herzegovina were recognized as independent States by the member States of the European Community, and admitted to membership of the United Nations at a time when substantial areas of the territories of each of them, because of the civil war situations, were outside the control of each government. In other cases, the requirement of an organized government was unnecessary or insufficient to support statehood. Some States had arisen before government was very well organized, as for example, Burundi and Rwanda which were admitted as States to the membership of the United Nations in 1961.

Moreover, a State does not cease to exist when it is temporarily deprived of an effective government because of civil war or similar upheavals. The long period of *de facto* partition of Lebanon did not hamper its continuance as a State. The lack of a government in Somalia did not abolish the international personality of the country. Even when all the territory of a State is occupied by the enemy in wartime, it continues to exist as in the cases of the occupation of European States by Germany in the Second World War and the occupation of Germany and Japan by the Allied powers after that war.

Nevertheless, the requirement of effective government remains strictly applied in case when part of the population of a State tries to break away to form a new State.

(d) A Capacity to Enter into Relations with Other States: The capacity to enter into relations with other States is an attribute of the existence of an international legal personality. A State must have recognized capacity to maintain external relations with other States. Such capacity is essential for a sovereign State; lack of such capacity will avert the entity from being an independent State. Capacity distinguishes States from lesser entities such as members of federation or protectorates, which do not manage their own foreign affairs, and are not recognized by other States as full-members of the international community.

(e) Other Requirements: Independence, sovereignty, self-determination and recognition are other requirements of statehood used either as separate criteria or in association with the above requirements. The concept of independence means that the State is subject to no other State. Many jurists stress on independence as the decisive criterion of statehood. Some consider independence the essence of a capacity to enter into relations with other States, and represented by this capacity. Others consider it in association with the requirement of effective government; to them, if an entity has its own executive and other organs, and conducts its foreign relations through its own organs, then it is independent, and this is a *prima facie* evidence of statehood.

Some jurists consider sovereignty as an important criterion of statehood; even some of them use the term sovereignty as a synonym for independence. The concept of sovereignty denotes, internally, the supreme undivided authority possessed by a State to enact and enforce its law with respect to all persons, property and events within its borders, and externally, the capacity of a State to enter into relations with other States, such as sending and receiving diplomats and engaging in treaty making, and the enjoyment of certain immunities and privileges from the jurisdiction of other States. Sovereignty, in this regard, is the indication of the international personality of an entity seeking a status of a State in the community of nations. Lack of sovereignty suggests that an entity is not independent and has no international legal personality, and consequently, not a State. However, some others reject

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sovereignty as a criterion of statehood on the considerations that Germany after 1945, although lost considerable extent of its sovereignty, it continued to exist as a State.

In the practice of States, the principle of self-determination has been used as a criterion modifying the requirement of effective government. The evolution of the right of self-determination has affected the level of effectiveness a concerned government required to exercise in order to fulfill such requirement of statehood. Therefore, a lower level of effectiveness has been accepted; this occurred particularly in decolonization situations where colonies were seeking their independence and the creation of their States. Moreover, the principle of self-determination has been used as an additional criterion of statehood in certain circumstances, such as, in the case of Rhodesia when it unilaterally declared independence on November 11, 1965, and in the cases of the successor States of the former Yugoslavia. This additional criterion may be required in the future in cases of certain national minorities seeking independence and the creation of their States.

In the context of the constitutive theory of recognition, recognition has been required as an additional criterion of statehood. The constitutive theory considers that the act of recognition constitutes or creates the new State, i.e., that the existence of a State begins with its recognition by other States. Accordingly, it is only through recognition that a State comes into being under International Law. The practice of States has required recognition as an additional criterion of statehood in certain instances, such as in the case of Rhodesia in 1965. At that time, although Rhodesia might have been regarded as a State by virtue of satisfaction of all the requirements of statehood (the factual requirements) enumerated in the Montevideo Convention of 1933, its status as a State was denied because no State did recognize it.

Fundamental Rights and Duties of a State

Rights and duties of a State have been the primary concern of International Law. The formulation of a list of the so-called fundamental or basic rights and duties of a State has been a persistent preoccupation of international conferences and bodies. The Montevideo Convention of 1933 on the Rights and Duties of States was the first attempt in the process of such formulation. This attempt was followed by the preparation of the International Law Commission of the United Nation "the Draft Declaration on the Rights and Duties of States of 1949", and the adoption of the General Assembly of the United Nations the Resolution 2625 of 1970 entitled the "Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations." The above instruments, together with the Charter of the United Nations, provide references for fundamental rights and duties of States.

Accordingly, under International Law States are entitled to enjoy certain fundamental rights and bound by certain duties.

A. Rights of a State

The rights of a State are those inherent rights which a State is entitled to under International law. These rights exist by virtue of the international legal order, which is able to define the rights of its subjects. Among the fundamental rights of a state are the following:

(1) The Right of Independence: Apart of being a requirement of statehood as mentioned previously, independence is an outstanding fundamental right of a State. Independence as defined by the Draft Declaration on the Rights and Duties of States of 1949 is the capacity of a State to provide for its own well-being and development free from the domination of other states.

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However, any political or economic dependence that may in reality exist does not affect the legal independence of the State, unless that State is formally compelled to submit to the demands of a superior State, in such a case a dependent Status is involved.

The right of independence in International Law includes a number of rights, such as, the right of territorial integrity, and the right to have an exclusive control over own domestic affairs.

(2) The Right of Sovereignty: The right of sovereignty is a fundamental right of a State. All States must enjoy such right. Sovereignty has twofold meaning. Firstly, sovereignty means that a State has the supreme undivided authority over its territory--this concept of sovereignty is known as territorial sovereignty. Secondly, sovereignty means the capacity of a State to enter into relations with other States, such as sending and receiving diplomats and engaging in treaty making, and the enjoyment of certain immunities and privileges from the jurisdiction of other States--this concept is connected with the concept of international personality.

Sovereignty has a much more restrictive meaning today than in the 18th and 19th Centuries when, with the emergence of powerful national States, few limits on State sovereignty were accepted. At the present time there is hardly a State has not accepted, in the interest of international community, restrictions and limitations on its freedom of action. Actually, the exercise of sovereignty today is not absolute. A State has subjected its sovereign powers to several limitations by virtue of treaties or decisions of international organizations of which it is a member, or by virtue of its consent.

(3) The Right of Territorial Jurisdiction: The Right of Territorial Jurisdiction is derived from the right of sovereignty. This right entitles a State to have the absolute and exclusive authority over all persons, property and events within the limits of its national territory. This authority implies jurisdiction of the State to enact the law, to enforce the law and to adjudicate persons and events within its territorial land, its internal and territorial water, and national air space.

(4) The Right of Sovereign Equality: Sovereign equality means that all State have equal rights and duties, have the same juridical capacities and functions, and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature. Sovereign equality is mentioned in the Charter of the United Nations as the principle on which this Organization is based.

(5) The Right of Self-Defense: The right of self-defense to which a State is entitled is recognized by Customary International Law as well as Article 51 of the Charter of the United Nations. However, this right cannot be exercised by a State unless an armed attack occurs against it and until the Security Council has taken the measures necessary to maintain international peace and security. In invoking this right, the State must comply with the requirements of Customary Law, which are the use of peaceful procedures—if they are available, necessity and proportionality.

B. Duties of a State

In correlation to the rights of the States, there are duties binding the States. All States are bound to observe their duties under International Law. Non-compliance of a State with its duties constitutes a violation of International Law for which it is responsible under this Law. Among the duties of a State are the following.

(1) The Duty to Refrain from the Threat or Use of Force: A State is under a duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State. This duty includes within its scope certain recognized duties, such as, the duty to refrain from propaganda for wars and aggression, the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands for incursion into the territory of another state, the duty to refrain from organizing, assisting or participating in acts

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of civil strife or terrorist act in another State and the duty to refrain from forcible action which derives peoples from their rights to self-determination, freedom and independence.

However, the use of force is accepted and considered lawful under International Law only if it is exercised in case of self-defense and in accordance with the provisions of the Charter of the United Nations.

(2) The Duty to Settle International Disputes by Peaceful Means: A State is under a duty to settle its international disputes with other States by peaceful means in such a manner that international peace, security, and justice are not endangered. The Charter of the United Nations, in Chapter 6, provided the machinery for the fulfillment of this duty by the States. Accordingly, States must seek a just settlement of its international dispute by any of the peaceful means stated in the Charter or by any peaceful means agreed upon by them. In case of their failure to reach a peaceful settlement by themselves, they are under a duty to comply with the actions taken by the United Nations.

(3) The Duty not to Intervene in the Affairs of Other States*: A* State is under a duty not to intervene, directly or indirectly, for whatever reason, in the internal or external affairs of any other State. It constitutes a violation of International Law any use, encourage the use or threat to use of military, economic, political or any other form of intervention against a State or against its political, economic and cultural elements.

(4) The Duty to Co-Operate with One Another: A State is under a duty to co-operate with other States, irrespective of the differences in their political, economic and social systems, in various spheres of international relations, in accordance with the Charter of the United Nations. Accordingly, a State should co-operate with other States in the economic, social, cultural, educational and scientific fields, as well as, in the fields of peace and security, and human rights and freedoms.

(5) The Duty of a State to Fulfill Its Obligations in Good Faith: A State is under a duty to fulfill in good faith the obligations assumed by it under the Charter of the United Nations and the International Law, including international treaties. The concept of good faith implies that a State should perform its assumed obligations honestly, without malice and defraud, and without seeking unconscionable advantage.

State Territory

As stated in a previous chapter dealing with a State, a territory is one of the fundamental elements of statehood. Without a territory, an entity cannot be a State. The notion that a State occupies a definite portion of the earth within which it exercises, subject to the limitations of International Law, its exclusive authority to the exclusion of other States lies at the basis of International Law. The exercise of such a supreme authority by a State over its own territory is known in International Law as “territorial sovereignty”.

Notably, the concept “territorial sovereignty” is confused with the concept “jurisdiction”. Some have used the two concepts interchangeably. However, there is a distinction between the two concepts. Territorial sovereignty signifies ownership and possession of a territory, which entitles a State to exercise its authority and jurisdiction over the territory. Jurisdiction justifies competence to affect peoples, properties and events within a territory.

Because “territorial sovereignty” and “jurisdiction” are two legal concepts connected to territory and can only be understood in relation to territory, therefore, in the following two sections “territorial sovereignty” and modes of acquiring territory are dealt with. While “jurisdiction” will be the subject of the next chapter.

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Territorial Sovereignty

Sovereignty in regard to a territory is known as territorial sovereignty. Territorial Sovereignty is the right of a State to exercise over its own territory, to the exclusion of any other States, the functions of a State. It has a positive and a negative aspect. The first aspect relates to the exclusivity of the right of the State with regard to its own territory, while the second aspect refers to the obligation to protect the rights of other States.

A State exercises its territorial sovereignty within its boundary. Boundary is an imaginary line that delineates the territorial limit of a State. Boundaries are of three dimensions. They include the State land and the maritime domain of its internal waters and territorial sea, the airspace and its subsoil. They are either natural topographical, having physical distinguishable features such as mountains, rivers or lakes, or imaginary and artificial such as lines of attitude and longitude, surveyor lines or posts. Both types have equal legal effects and usually based upon treaties or historical title.

The sovereignty of a coastal State extends, beyond its boundaries, over its contiguous zone, over its continental shelf and over its exclusive economic zone. Moreover, the sovereignty of State whether coastal or land-locked extends over its national vessels. The sovereignty of a State extends also to its national aircrafts.

The right to territorial sovereignty enables a State to exercise the fullest measures of sovereignty powers over its land territory, large measures over its territorial waters and air space, and smaller measures over its continental shelf and adjacent area. In addition, it enables a State to exercise sovereignty over vessels and aircrafts that fly its flag or carry its nationality, which are treated as its territory.

Corollary to the rights generated from territorial sovereignty, there are duties imposed upon a State. These duties involve the obligation to protect within its territory the rights of other States, together with the rights that each State may claim for its nationals in foreign territory.

Many treaties and conventions have been concluded to regulate State sovereignty over land, sea, airspace and outer space. Over airspace and outer space, there are the 1944 Convention on International Civil Aviation (the Chicago Convention), the 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water, and the 1967 Treaty on Principles Governing the Activities in the Exploration and Use of Outer Space including the Moon and Other Celestial Bodies (the Outer Space Treaty).

Over the sea, there is the 1982 Convention on the Law of the Sea, which replaced the 1956 Conventions related to the Territorial Sea and the Contiguous Zone, the High Seas, the Continental Shelf, and Fishing and Conservation of living Resources of the High Seas. In Addition, there is the 1959 Antarctica Treaty.

Since the rights generated from the concept of territorial sovereignty can only be exercised in relation to a territory, it is necessary to know how a territory can be acquired.

Acquisition of Territory

The international rules related to territorial sovereignty are rooted in the Roman Law provisions governing ownership and possession. In addition, the classification of the different modes of acquiring territory is a direct descendant of the Roman rules dealing with property.

Territory is the space within which the State exercises sovereign authority. Title to territory is acquired either through the claim of land not previously owned (*terra nullius*) or through the transfer of title from one State to another. Title acquired in the first category is called original title, while in the second category is called derivative

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title. Modes of original acquisition of territory include occupation, prescription and accretion. Derivative modes include cession (voluntary or forcible), and conquest and annexation. All these modes are dealt with in the following.

(1) Occupation: Occupation is an original mode of acquisition by a State of a title to a territory. It implies the establishment of sovereignty over a territory not under the authority of any other State (*terra nullius*) whether newly discovered or abandoned by the State formerly in control (unlikely to occur).

For the title acquired through occupation to be final and valid under International Law, the presence and control of a State over the concerned territory must be effective. Effectiveness requires on the part of the Claimant State two elements: an intention or will to act as sovereign, and the adequate exercise of sovereignty. Intention may be inferred from all the facts, although sometimes it may be formally expressed in official notifications to other States. Adequate exercise of sovereignty must be peaceful, real, and continuous. This element of physical assumption may be manifested by an explicit or symbolic act by legislative or administrative measures affecting the claimed territory, or by treaties with other States recognizing the sovereignty of the Claimant State over the particular territory or demarcating boundaries.

Occupation was often preceded by discovery that is the realization of the existence of a particular piece of land. In the early period of European discovery, in the Fifteenth and Sixteenth Centuries, the mere realization or sighting was sufficient to constitute title to territory. As time passed, something more was required and this took the form of symbolic act of taking possession, whether by raising of flags or by formal declarations. By the Eighteenth Century, the effective control came to be required together with discovery to constitute title to territory.

(2) Prescription: Prescription is a mode of establishing title to territory which is subject to the sovereignty of another State (not *terra nullius*) through peaceful exercise of *de facto* sovereignty over a long period of time. It is the legitimization of a doubtful title by the passage of time and the presumed acquiescence of the former sovereignty. It differs from occupation. It relates to territory which has previously been under the sovereignty of another State. However, both modes are similar since they require evidence of sovereignty acts by a State over a period of time.

A title by prescription to be valid under International Law, it is required that the length of time must be adequate, and the public and peaceful exercise of *de facto* sovereignty must be continuous. The Possession of Claimant State must be public, in the sense that all interested States can be made aware of it. It must be peaceful and uninterrupted in the sense that the former sovereign must consent to the new sovereign. Such consent may be express or implied from all the relevant circumstances. This means that protests of whatever means by the former sovereign may completely block any claim of prescription.

As the requirement of adequate length of time for possession is concerned, there is no consensus on this regard. Thus, the adequacy of the length of period would be decided on a case by case basis. All the circumstances of the case, including the nature of the territory and the absence or presence of any competing claims will be taken into consideration.

(3) Accretion: Accretion is a geographical process by which new land is formed mainly through natural causes and becomes attached to existing land. Examples of such a process are the creation of islands in a five mouth, the drying up or the change in the course of a boundary river, or the emerging of island after the eruption of an undersea volcano. When the new land comes into being within the territory of a State, it forms part of its territory, and this causes no problem. However, in case of a drying or shifting of a boundary river, the general rule of International

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Law is that if the change is gradual and slight, the boundary may be shifted, but if the change is violent and excessive, the boundary stays at the same point along the original riverbed.

Where a new territory is added, mainly through natural causes, to territory already under the sovereignty of the acquiring State, the acquisition and title to this territory need no formal act or assertion on part of the acquiring State.

(4) Cession: Cession of territory is a transfer of sovereignty from one sovereign to another. Its basis lies in the intention of the concerned parties to transfer sovereignty over the territory in question, and it rests on the principle that the right of transferring its territory is a fundamental attribute of the sovereignty of a State. It occurs by means of an agreement between the ceding and the acquiring States. The cession may comprise a portion of the territory of the ceding State or the totality of its territory. In the latter case, the ceding State disappears and merges into the acquiring State.

Cession of territory may be voluntary as a result of a purchase, an exchange, a gift, a voluntary merger, or any other voluntary manner, or it may be made under compulsion as a result of a war or any use of force against the ceding State. History provides a great number of examples of cession. Examples of voluntary cession are the United States' purchase of Alaska from Russia in 1867, the exchange of a portion of Bessarabia by Romania to Russia in exchange for Dobrudja in 1878, the France's gift of Venice to Italy in 1866, and the voluntary merger of the Republic of Texas into the United States in 1795. Examples of cession as a result of a war are the cession to Germany by France of the region of Alsace- Lorraine in 1871, and the merger of Korea into Japan in 1910.

(5) Conquest and Annexation: Conquest is an act of defeating an opponent State and occupying all or part of its territory. Annexation is the extension of sovereignty over a territory by its inclusion into the State. Under traditional International Law, conquest did not of itself constitute a basis of title to the land. It was merely a military occupation. If followed by a formal annexation of the conquered territory, then it was called subjugation and could be considered a valid derivative title to territory. Accordingly, conquest followed by annexation constituted a mode to transfer the title of the conquered territory to the conqueror. Like compulsory cession, conquest followed by annexation would transfer territory by compulsion, but unlike cession, it involved no agreement between the concerned parties.

While the acquisition of territory through conquest followed by annexation was an accepted mode of acquiring title to territory under traditional International Law, it is no longer legal at modern times. The acquisition of territory through the use of force is outlawed by paragraph 4 of article 2 of the Charter of the United Nations, which obliged the member States to refrain from the use of force against the territorial integrity or political independence of any State. This same principle is reaffirmed in the 1970 General Assembly "Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations". This Declaration adds that the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force, and that no territorial acquisition resulting from such act shall be recognized as legal.

Although today conquest is not a legal mode of acquiring title to territory, it does give the victor certain rights under International Law as regards the occupied territory, such as rights of belligerent occupation. The territory remains the legal possession of the ousted sovereign because sovereignty does not pass by conquest to the occupying State, although it may pass in certain cases where the legal status of the territory occupied is in dispute prior to the conquest.

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At present times, acquisition of territory following a war would require further international action in addition to internal legislation to annex. Such further international action would be either a treaty of cession by the former sovereign or international recognition.

Modern examples of annexation following conquest are Israel's annexation of the Golan Heights and the East Jerusalem, and Iraq's annexation of Kuwait in 1990. In case of the Iraqi annexation, the Security Council adopted the resolution 662 of 1990 declaring that this annexation "has no legal validity and is considered null and void", and called upon all States not to recognize this annexation and to refrain from actions which might be interpreted as indirect recognition.

Corresponding the modes of acquiring territory, there are modes of losing it. Territory may be lost by express declaration or conduct such as a treaty of cession or acceptance of cession, by conquest, by erosion or natural geographic activities, by prescription or by abandonment.

LOSS OF STATE TERRITORY

Now that we have discussed all modes of acquiring territory or rather acquiring sovereignty over territory we can easily point out the corresponding methods of losing state territory. These are cession, dereliction, operation of nature, subjugation, prescription and there is a sixth mode that is Revolt. Loss of territory by subjugation, cession and prescription is pretty straightforward and requires no further explanation. It's simply the corresponding loss of a territory due to the gain of that territory by another state.

Revolt on the other hand has been accepted as a mode of losing territory to which there is no corresponding mode of acquisition. There is no hard and fast rule regarding the time when a state which has broken off from another can be established permanently as another state. A revolt however seems to be more of a political issue than a legal mode of loss of territorial sovereignty.

Dereliction as a mode of losing territory corresponds to occupation. Dereliction frees a territory from sovereignty of the present state possessor. When the owner state completely abandons a territory with the intention of withdrawing from it permanently and relinquishing sovereignty over it dereliction is effected. Actual abandonment alone cannot amount to dereliction as it is assumed that the owner will and can retake possession. Hence, just like occupation there has to be an abandonment of territory (corpus) and an intention (animus) to withdraw too.

We shall lastly discuss the loss of territory due to natural causes, as an operation of nature. Just like accretion adds to state territory, disappearance of land due to natural factors is ipso facto a loss of state territory. Thus, if an island submerged or a river changes its course so as to eat into part of the territory of the state there is loss of territory. This topic is widely gaining importance nowadays in the global scenario because the rapid changes in the environment have caused a substantive rise in sea level. This has lead to the threat submergence of several island nations. These nations are facing severe issues and are looking for support from other countries as their territory is under the threat of completely vanishing altogether. Vanuatu, Marshall Islands, Fiji etc are some of the countries that have already lost major portions of their territory due to rising sea levels and have started asking neighbouring countries to provide their subjects with territory to live. These residents have now formed a class of people called environmental refugees and their rights under international law are a subject of wide discussion.

Q. Discuss various kinds of State Jurisdictions. What are the exceptions to the rule of exclusive Jurisdiction of a state?

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State jurisdiction is the capacity of a State under International Law to prescribe and enforce the rules of law. It is derived from the State sovereignty and constitutes its vital and central feature. It is the authority of a State over persons, property and events which are primarily within its territories (its land, its national airspace, and its internal and territorial water). This authority involves the powers to prescribe the rules of law, to enforce the prescribed rules of law and to adjudicate. The powers related to State jurisdiction raise the question regarding the types and forms of State Jurisdiction.

State jurisdiction may extend beyond its territory over persons and things which have a national link. This extension raises the question regarding the grounds or the principles upon which the State can assert its jurisdiction within and beyond its boundaries.

Nevertheless, there are certain persons, property and events within a State territory which are immune from its jurisdiction. This limitation to a State jurisdiction raises a question regarding the immunity from jurisdiction.

The answers to the above raised questions are dealt with in the following sections.

Types of State Jurisdiction

State jurisdiction implies the competence to prescribe rules of law, the jurisdiction to enforce the prescribed rules of law and the jurisdiction to adjudicate. Accordingly, it is of three types: legislative jurisdiction, executive jurisdiction and judicial jurisdiction.

(1) Legislative Jurisdiction: Legislative jurisdiction is the capacity of a State to prescribe rules of law (the power to legislate). A State has the supremacy to make binding laws within its territory. It has a legislative exclusivity in many areas. This supremacy is entrusted to constitutionally recognized organs.

Although legislation is primarily enforceable within a State territory, it may extend beyond its territory in certain circumstances. International Law, for example, accepts that a State may levy taxes against persons not within its territory as long as there is a real link between the State and the proposed taxpayer, whether it is nationality or domicile.

The question of how far a court will enforce foreign legislation is a matter within the field of Private International Law (conflict of laws). It is common practice of States that a State enforces civil laws of another State, but it is rare to enforce the penal or taxes laws of another State.

The legislative supremacy of a State within its territory is well established in International Law. However, this supremacy may be challenged in cases where a State adopts laws that are contrary to the rules of International Law. In such cases, a State will be liable for a breach of International Law. A State may also be liable for a breach of International Law if it abuses its rights to legislate for its nationals abroad.

(2) Executive Jurisdiction: Executive jurisdiction is the capacity of a State to act and to enforce its laws within its territory. Generally, since States are independent of each other and possess territorial sovereignty, they have no authority to carry out their functions on foreign territory. No State has the authority to infringe the territorial sovereignty of another State. In this sense, a State cannot enforce its laws upon foreign territory without the consent of the host State; otherwise, it will be liable for a breach of International Law.

(3) Judicial Jurisdiction: Judicial jurisdiction is the capacity of the courts of a State to try legal cases. A State has an exclusive authority to create courts and assign their jurisdiction, and to lay down the procedures to be followed. However, in doing so, it cannot by any means alter the way in which foreign courts operate.

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There are a number of principles upon which the courts of a State can claim jurisdiction. In civil matters, the principles range from the mere presence of the defendant in the territory of a State to the nationality and domicile principles. In the criminal matters, they range from the territorial principle to the universality principle. These principles are the subject of the following section.

Principles of Jurisdiction

Generally, the exercise of civil jurisdiction by courts of a State has been claimed upon far wider grounds than has been the case in criminal matters. The consequent reaction by other State with this regard has been much mild. This is partly because public opinion is far more vigorous where a person is tried in foreign territory for criminal offences than if a person is involved in a civil case. In addition, International Law does not impose any restrictions on the jurisdiction of courts in civil matters.

In Common Law countries such as the United States and United Kingdom, the usual ground for jurisdiction in civil cases is the service of a writ upon the defendant within the country, even if the presence of the defendant is temporary and incidental. In Civil Law countries, the usual ground for jurisdiction is the habitual residence of the defendant in the country. In some countries such as Netherlands, Denmark and Sweden, generally courts assert their jurisdiction if the defendant possesses assets in the country; however, in matrimonial cases the commonly accepted ground for jurisdiction is the domicile or residence of the plaintiff.

As far as criminal jurisdiction is concerned, the grounds or principles of jurisdiction mostly invoked by States are as follows.

(1) The Territorial Principle: The territorial principle is derived from the concept of State sovereignty. It means that a State has the primary jurisdiction over all events taking place in its territory regardless of the nationality of the person responsible. It is the dominant ground of jurisdiction in International Law. All other State must respect the supremacy of the State over its territory, and consequently must not interfere neither in its internal affairs nor in its territorial jurisdiction.

The territorial jurisdiction of State extents over its land, its national airspace, its internal water, its territorial sea, its national aircrafts, and its national vessels. It encompasses not only crimes committed on its territory but also crimes have effects within its territory. In such a case a concurrent jurisdiction occurs, a subjective territorial jurisdiction may be exercised by the State in whose territory the crime was committed, and an objective territorial jurisdiction may be exercised by the State in whose territory the crime had its effect.

Although jurisdiction is primarily and predominantly territorial, it is not exclusive. A State is free to confer upon other States the right to exercise certain jurisdiction within its national territory. States are free to arrange the right of each one to exercise certain jurisdiction within each national territory. The most significant recent examples of such arrangements are: the 1991 France-United Kingdom Protocol Concerning Frontier Control and Policing, under which the frontier control laws and regulations of each State are applicable and may be enforced by its officers in the control zones of the other; the 1994 Israel-Jordan Peace Treaty, under which the Israeli criminal laws are applicable to the Israeli nationals and the activities involving only them in the specified areas under Jordan's sovereignty, and measures can be taken in the areas by Israel to enforce such laws.

(2) The Nationality Principle: The nationality principle implies that a State jurisdiction extends to its nationals and actions they take beyond its territory. It is based upon the notion that the link between the State and its nationals is personal one independent of location.

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Criminal jurisdiction based on the nationality principle is universally accepted. While Civil Law countries make extensive use of it, the Common Law countries use it with respect to major crimes such as murder and treason. The Common law countries, however, do not challenge the extensive use of this principle by other countries.

A State may prosecute its nationals for crimes committed anywhere in the world; the ground of this jurisdiction is known as active nationality principle. Also, it may claim jurisdiction for crimes committed by aliens against their nationals abroad; the ground of this jurisdiction is known as passive nationality principle. This last principle has been viewed as much weaker than the territorial or active nationality principle as a basis for jurisdiction. It has been considered as a secondary basis for jurisdiction, and a matter of considerable controversy among States. However, in recent years this principle has come to be much acceptable by the international community in the sphere of terrorist and other internationally condemned crimes.

(3) The Protective principle: The protective principle implies that a State may exercise jurisdiction over an alien who commits an act outside its territory, which is deemed prejudicial to its security and interests. It is universally accepted, although there are uncertainties as to its practical extent, particularly as regard to the acts which may come within its domain. It is justified on the basis of protection of State's vital interests, particularly when the alien commits an offence prejudicial to the State, which is not punishable under the law of the country where he resides and extradition is refused.

Although the protective principle is used as a secondary basis for jurisdiction and in a narrower sense than the territorial or the nationality principle, it can easily be abused, particularly in order to undermine the jurisdiction of other States. In practice however, this principle is applied in those cases where the acts of the person which take place abroad constitute crimes against the sovereignty of the State, such as plots to through a government, treason, espionage, forging a currency, economic crimes and breaking immigration laws and regulations. This principle is often used in treaties providing for multiple jurisdictional grounds with regard to specific crimes, such as the 1979 Hostage Convention and the 1970 Hague Aircraft Hijacking Convention.

(4) The Universality Principle: The universality principle, in its broad sense, implies that a State can claim jurisdiction over certain crimes committed by any person anywhere in the world, without any required connection to territory, nationality or special State interest. Before the Second World War, such universal jurisdiction has been considered as contrary to International Law by the Common Law countries, except for acts regarded as crimes in all countries, and crimes against the international community as a whole such as piracy and slave trade.

After the Second World War, universal jurisdiction has been universally recognized over certain acts considered as international crimes. International crimes are those crimes committed against the international community as a whole or in violation of International Law and punishable under it, such as war crimes, crimes against peace and crimes against humanity. In recent years, crimes such as Hijacking of aircraft, violation of human rights and terrorism, have been added to the list of international crimes.

Today under the universality principle, each State and every State has jurisdiction over any of the international crimes committed by anyone anywhere.

Immunity from Jurisdiction / Exceptions to Exclusive State Jurisdiction

The concept of jurisdiction is derived from the concept of sovereignty, and is connected with the principles of equality and non-interference in domestic affairs of other States. The grounds for jurisdiction are related to the duty of a State under International Law to respect the territorial integrity and political independence of other States. Immunity from jurisdiction is grounded on this duty, and constitutes derogation from the host State jurisdiction.

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Under International Law, immunity from jurisdiction is granted to certain persons, namely States (sovereigns) and their diplomatic and consular representatives, and international organizations.

(1) Sovereign Immunity: In International Law, sovereign immunity refers to the legal rules and principles determining the conditions under which a State may claim exemption from the jurisdiction of another State. Sovereign immunity is a creation of customary International Law and derives from the principles of independence and equality of sovereign States; since States are independent and legally equal, no State may exercise jurisdiction over another State without its consent. It is a limitation imposed by International Law upon the sovereignty of a State.

Although rules of sovereign immunity form part of customary International Law, today they are incorporated either in international treaties, such as the 1972 European Convention on State Immunity, or in national statutes of certain States, such as the 1976 U.S Foreign Sovereign Immunities Act and the 1978 U.K State Immunities Act.

Historically, the head of a State (a sovereign) was associated with the State. Originally, both of them enjoyed under customary International Law absolute immunity, in all areas of their activities, from the jurisdiction of another State. While the head of a State continues today to enjoy such absolute immunity, even for his private activities, a State nowadays enjoys only qualified (restrictive) immunity. Under the qualified immunity, a State enjoys immunity only in respect of its governmental acts (acts *jure imperii*), not in respect of its commercial acts (acts *jure gestionis*).

In practice, sovereign immunity arises on two levels. The first level concerns the immunity of a State from the jurisdiction of courts of another State; courts of a State cannot adjudicate a claim against a foreign State. The second level concerns the immunity of a State from the execution of enforcement measures undertaken by courts of another State.

Sovereign immunity covers the head of a State as well as the State itself, its government, its departments, and its agencies. It embraces the acts of these entities, their property and assets. This immunity may, however, be voluntarily waived by a State. A State may waive its immunity from jurisdiction and consequently submits itself to the jurisdiction of a foreign court. However, such submission (waiver of jurisdictional immunity), although gives the court of a State the competence to adjudicate and enter a judgment against a foreign State, it does not authorize the execution of the court's decision against such State. In case of execution, another waiver is needed, namely a waiver of immunity from execution. Waiver must be express; however, implied waiver is accepted if indicated by the circumstances.

(2) Diplomatic Immunity: The rules of diplomatic immunity are the most accepted and uncontroversial rules of International Law. They are essential for the maintenance and efficient conduct of relations between States. Prior to the 1961 Vienna Convention on Diplomatic Relations, diplomatic law, especially privileges and immunities were based upon custom as well as contained in bilateral treaties and national statutes. Nowadays, most of the modern law of diplomatic immunity is contained in the 1961 Vienna Convention on Diplomatic Relations which both codified existing customary law and established others.

Under this convention, "a diplomatic agent" (the head of the mission and any member of the diplomatic staff of the mission) enjoys complete immunity from the criminal jurisdiction of the receiving State; also, he enjoys immunity from its civil and administrative jurisdiction, except in the case of real action relates to private immovable property situated within the receiving State, action related to succession matters in which he is involved as a private person, and action related to professional or commercial activity, in the receiving State, outside his official functions. No measures of execution may be forced upon him, except in the above mentioned cases. He cannot be obliged to give evidence as a witness. His person is inviolable. He cannot be arrested or detained. All appropriate steps should be

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taken by the receiving State to protect him and prevent any attack on his person, freedom and dignity. He is exempt from all dues and taxes, except in certain cases. The premises of the mission and the private residence of a diplomatic agent as well as their archives, documents, papers, official correspondence and other property are inviolable.

A diplomatic agent enjoys immunity from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs. He also enjoys such immunity when passes through or is in the territory of a third State on proceeding to take up or to return to his post, or when returning to his own country.

The immunity granted to a diplomatic agent is immunity from the jurisdiction of the receiving State and not from liability. He is not immune from the jurisdiction of the sending State. Moreover, he can be sued in the receiving state after a reasonable time elapses from the ending of his mission.

The immunity of a diplomatic agent from jurisdiction of the receiving State may be waived by the sending State. The waiver must be express. However, such waiver of immunity from jurisdiction does not imply waiver of immunity in respect of the execution of a judgment; in such case, a separate waiver is required. Immunity may also be waived by the diplomatic agent himself, by submitting voluntarily to the jurisdiction of the court of the receiving State.

Members of the family of a diplomatic agent, if they are not nationals of the receiving State, likewise enjoy the same immunity from jurisdiction. The same immunity, with certain exceptions, is enjoyed by members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, if they are not nationals or permanent residents of the receiving State. Members of the service staff who are not nationals or permanent residents of the receiving State enjoy immunity only in respect of acts performed in the course of their official duties.

(3) Consular Immunity: A consular officer, like a diplomatic agent, represents his State in the receiving State. However, unlike a diplomatic agent, he is not concerned with political relations between the two States, but with a variety of administrative functions, such as issuing visas and passports, looking after the commercial interests of his State, and assisting the nationals of his State in distress. Thus, he is not granted the same degree of immunity from jurisdiction as a diplomatic agent.

Notably nowadays, many States combine its diplomatic and consular services. Thus, a person who acts simultaneously as a diplomat and consul enjoys diplomatic immunity.

Under the 1963 Vienna Convention on the Consular Relations, a consular officer (the head of the consular post and any person entrusted to exercise consular functions) is immune from an arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority. He is immune from imprisonment or any other restriction on his personal freedom save in execution of a final judicial decision. If criminal proceedings are instituted against him, he must appear before the competent authorities. The proceedings must be conducted in a manner that respects his official position and does not hamper the exercise of consular functions, and with the minimum delay.

A consular officer is immune from the jurisdiction of the judicial or administrative authorities of the receiving State only in respect of acts performed in the exercise of consular functions. He is exempt from all dues and taxes, except in certain cases. In addition, the consular premises, archives and documents are inviolable.

A consular officer enjoys the immunities from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties. The same

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immunities are enjoyed by members of the family of the consular officer from the date which he enjoys his immunities.

The immunities of a consular officer may be waived by the sending State. The waiver must be express. However, the waiver of immunity from jurisdiction for the purposes of civil or administrative proceedings does not imply waiver of immunity from the execution of a judicial decisions; in such case, a separate waiver is required. Immunity may also be waived by the consular officer himself, by submitting voluntarily to the jurisdiction of the court of the receiving State.

(4) Immunities of International Organizations: It is uncertain which immunities and to what extent international organizations enjoy under customary International Law; the position of this law is far from clear. Actually, immunities are granted to international organizations by treaties, or by headquarters agreements concluded with the host State where the organization is seated.

The purpose of immunity granted to international organizations is purely functional. Immunity is regarded as functionally necessary for the fulfillment of their objectives. It is not a reflection of sovereignty, as it is in case of a State, except only indirectly when aiming to protect the interests of the member States of the organization.

Probably the most important example of treaties providing immunities to international organizations is the 1946 General Conventions on the Privileges and Immunities of the United Nations, which sets out the immunities of the United Nations and its personnel. The United Nations enjoys complete immunity from all legal process. Its premises, assets, archives and documents are inviolable. It is exempt from direct taxes and customs duties. Its staff is exempt from income tax on their salaries.

The U.N Secretary General and the Assistant Secretaries General enjoy diplomatic immunity. Other staff members enjoy limited immunities, such as immunity from legal process in respect of their official acts.

Representatives of member States attending the United Nations meetings are granted almost the same immunities as diplomats, except their immunity from legal process applies only to their official acts.

An example of treaties providing immunities to representatives of States in international organizations is the 1975 Vienna Convention on the Representatives of States in their Relations with International Organizations of a Universal Character. This treaty applies to representatives of States in any international organizations of a universal character, irrespective of whether or not there are diplomatic relations between the sending State and the host States.

Under this treaty, the representatives of States in universal international organizations enjoy similar immunities to those provided in the 1961 Vienna Convention on Diplomatic Relations. They enjoy immunity from criminal jurisdiction, and immunity from civil and administrative jurisdiction in all cases, save for certain exceptions. The mission premises, archives, documents and correspondence are inviolable.

Q. Define and distinguish between a federal state and a Confederation. How does a Vassal State differ from a Protectorate State?

<u>Confederation V. Federal State</u>

Sovereignty: Sovereignty is held by the member states. In a Confederation, the federal government is accountable to the member states, who are the ultimate authority. On the other hand sovereignty is held by the federal

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government. In a Federation, the federal government will hold the ultimate authority and the member states will be subordinate to it.

Central Authority: The central authority of a confederation is usually a weak body appointed by the member states. Whereas the central authority of a federation is a federal government which governs the member states.

Powers of the Central Authority: Usually powers of the central authority in a confederation will focus on joint foreign policy and defense matters, but confederation rarely will have the power to do much more than that. whereas powers of the central authority in a federation is dtermined by the constitution of the federation, but will generally have rights to exercise control over the diplomatic, military, economic, and legal spheres of the member states.

Examples: Confederation: Toltec Empire, League of Mayapan, Crown of Aragon, Confederation of Madya-as, Old Swiss Confederacy, New England Confederation, Aro Confederacy, United States of America (1781-1789), Confederation of the Rhine and many more.

Federation: Canada, United States of America, Mexico, Venezuela, Brazil, Argentina, Belgium, Germany, Switzerland, Austria, Bosnia and Herzegovina, Estonia, Russia, Iraq, United Arab Emirates, Pakistan, India, Nepal, Malaysia, Australia, Sudan, and many more.

Difference between Protectorate and Vassal State

Protectorate State: When one State surrender itself by an agreement embodied in a treaty, the administration of certain important international affairs, to the protection of another state, a kind of relationship is established between two states known as Protectorate.

According to Starke, Although not completely independent, a Protectorate State may enjoy a sufficient measure of sovereignty to claim jurisdictional immunity in the territory of another state, it may also still remain a State under international law.

Thus, Protectorate State are not sovereign States. However they are prima facie independent and the possessor of all rights which they have not surrendered. A Protectorate State can remain a State under international law and may possess some rights and immunities.

Vassal State: A State which is under the suzerainty of another state is called a Vassal State. Its independence is so restricted that It has no importance under international law.

According to Starke, "Vassal State is one which is completely under the suzerainty of another state. Internationally it's independence is so restricted as scarcely exist at all.

In it's foreign affairs the Vassal State possess no power and all its foreign policies are governed by the state of which he is a Vassal State.

Following are the Five differences between a Protectorate and Vassal State:

1. A Protectorate State, through a treaty entrusts it's matter of security, defense and external affairs to another state. A Vassal State is autonomous in its internal affairs, but is completely dependent upon other State in external affairs.

2. A Protectorate State may become a member of international community. A Vassal State is not regarded a member of the international community.

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3. If any war is declared by the protecting State against any country, then the Protectorate State is not necessarily involved in that war. Thus, the treaty entered into by the protecting State is not binding upon the Protectorate State. In the case of a Vassal State, it is not bound by the treaty entered into by the protecting State.

4. A Protectorate State is not completely sovereign and in fact its sovereignty is taken by the country of which it becomes a Protectorate State. A Vassal State is a semi-sovereign State.

5. Protectorate State may remain a State. Vassal State is completely under the suzerainty of another state and has no separate and independent existence under international law.

Q. What is Recognition? Explain the different theories relating to the legal significance of Recognition. What are the legal effects of recognition and consequences of non-recognition? Is withdrawal of Recognition possible?

Main addressors of the international law are the sovereign states. For an entity of being called a state and to enjoy rights, duties and obligations under international law, it is necessary that the existing state have given awareness of its capability of being a state. Such awareness by existing states is called recognition.

Recognition: – The term recognition as an international legal term may be defined as under: "The acknowledgement or acceptance by the members of international community, that a new state has acquired international personality, is said to be recognition."

Essentials: – The main essentials of recognition may be given as under:

1. That the community (of new state) must be politically organized,
2. That it should have control over a definite territory,
3. That the control should tend towards permanency,
4. That such community must be independent. In other words, the attributes of statehood are people, territory, Government, and sovereignty.

Theories of Recognition: – There are mainly two theories of recognition which may discussed as under:

1. Constitutive Theory.
2. Declarative Theory or Evidentiary Theory.
3. **Constitutive Theory:** -Oppenheim, Hegal and Anziloti are the chief exponents of this theory. According to this theory the only certificate to issue international personality to a new born state is the consent of the already existing states. In other words a new entity shall only be called a state when the existing states acknowledges about its statehood. So, the independence of a new entity shall not amount it to be called a state unless it has not recognized by the existing states.
4. **Criticism: –** The theory has severely been criticized by a number of jurists. Because, at first instance that states do not seem to accept recognition as a legal duty. And at the second instance, it creates many difficulties when a community claims of being a new state and its non-recognition will, according to this

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theory, imply that it has no rights, duties and obligations under international law. The theory is not correct in any sense so shall be rejected.

5. **Declaratory Theory: –** The chief exponents of this theory are Hall, Wagner, Fisher and Brierly. According to this theory, the statehood or the authority of new Government is not dependent on the consent of the existing state but is based on some prior or existing fact. According the followers of this theory, the recognition by the existing states is merely a formal acknowledgement of the statehood and not the condition. In fact the statehood is dependent on the some prior conditions necessary for an entity to be called as a state.

Criticism: – This theory has also been criticized, because it is not correct that in all cases the existing fact shall imply the statehood, rather some time the statehood may be constitutive.

Conclusion: – From the above discussion it may be concluded that both the theories are insufficient to reflect the real explanation of recognition. In fact there shall be intermediate course of approach between the two theories to understand recognition. Briefly, speaking, the definition of recognition depends upon the mode, scope and nature of each case. In other words, recognition may be sometimes constitutive and sometimes declaratory.

Modes of Recognition: – There are two modes of recognition, which may be given;

1. De facto Recognition.

2. De jure Recognition.

3. **De facto Recognition: –** The provisionally grant; that is subject to fulfillment of all the attributes of statehood, of recognition to a new state which has acquired sufficient territory and control over the same, but the recognizing states considers it not stable more, is said to be De facto Recognition.

4. **De jure Recognition: –** The grant of recognition to a new born state by an existing state, when it considers that such new born state has attained all the attributes of statehood with stability and permanency, is called De jure Recognition.

Differences Between De facto and De jure Recognition. De facto and De jure recognition may differentiate on the basis of following points of distinction. De facto Recognition. De jure Recognition.

1. De facto Recognition is provisional recognition subject to fulfillment all attributes of statehood. 1. it is absolute recognition granted to a state which have attained all the attributes of statehood, possesses sufficient control with permanency.

2. De facto Recognition creates few essential rights and duties for recognized and recognizing states. 2. It creates absolute rights for the parties thereto.

3. De facto Recognition does not create full diplomatic intercourse between the parties. 3. It creates full diplomatic intercourse between the parties.

4. The full diplomatic immunities are not granted in this De facto Recognition. 4. Here in full diplomatic relations are granted to the recognized state.

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5. In this case the recognized state 5. In this case, the claim can be made and cannot claim for the property situate in the recognizing state's territory

6. In such a case the official visits and dealings may be subjected to limitations. 6. In such a case limitations are not necessary.

Forms of Recognition: – There are following two forms for the declaration of recognition.

1. Express Recognition. 2.

Implied Recognition.

Express Recognition: – The declaration or notification by an existing state which purports the intention to recognize a newly born state, the recognition is said to be express recognition. In other words, when a formal and express declaration or statement is made and published or sent to the opposite party, the recognition is said to be express recognition.

Implied Recognition: – When the existing state shows its intention of recognition of a newly born state by some acts, the recognition is said to be implied recognition. In other words, in case of implied recognition no formal statement or declaration is to be made, rather the intention of recognition is to be collected by the acts or transactions of the existing state. So, if such acts purport intention of recognition, it is said to be implied recognition.

Conditional Recognition: – The grant of recognition by an existing state to a newly born state stipulated on fulfillment some conditions in addition to the requirements of statehood is said to be conditional recognition. As for as, the recognition is concerned it is itself conditioned with the fulfillment of the essentials of statehood, that is to say, the new state must occupy some territory, has some population, government and sovereignty. If these requirements have been complied with by the new state, then that should be recognized by existing states. But as for as, the recognition is concerned it is usually based on some political considerations. So, in the pursuance of these considerations the existing states sometimes declare recognition but stipulated with certain other conditions for the recognized state to be fulfilled.

Criticism: – Many jurists have criticized conditional recognition. According to them recognition is a legal matter and it should not be accompanied with conditions other than required by law. It is due to this reason that when in case of conditional recognition the recognized state if didn't fulfill the prescribed condition the recognition shall be valid and not extinguished. Rather it will affect the relations between the recognized and recognizing states.

Withdrawal of Recognition: – Withdrawal of recognition may be explained as under:

1. **Withdrawal of de facto Recognition: –** Withdrawal of de facto recognition is possible under international law only on the ground that if the recognized state has been failed to fulfill the pre requisite condition for statehood. In such a case the recognizing state may withdraw from the recognition by communicating a declaration to the authorities of recognized stated or by a public statement.

2. **Withdrawal of de jure Recognition:** – There are different views about the withdrawal of de jure recognition. But according to the strict letters of international law and by the virtue of some conventions in this behalf, it is evident that the withdrawal of de jure recognition is not valid in any case. Though recognition is a political act but de jure but it by nature and status it is a legal oriented. But some jurists think that de jure recognition may be withdrawn, because it is a political act. But in fact it is not so. Only those de jure recognitions may be withdrawn where a state subsequently loses any essential of statehood. In such a case the state withdrawing

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from recognition shall send his express intention to the concerned authority issue a public statement to that extent.

Recognition of Government: As we know that government is an essential of statehood. By government it is meant the administrative and controlling tool of a state. Once a state comes into being, its government may change from time to time. If the change of government takes place in ordinary political life it the existing states are not required to recognize the new government. But sometimes the change of a government takes place as a result of a revolution. In such a case, it becomes necessary to ascertain that whether this new revolutionary government is;

1. capable of having sufficient control over the people of the territory or not, and

2. willing to maintain international responsibilities and duties or not. So, if the existing states consider that this new government is capable of fulfilling the above conditions then the new government may be recognized.

The recognition of new regime means that the existing states are satisfied that the new government has a capacity to control and is willing to perform international duties and obligation. The recognition may be either de facto or de jure. And the intention may be expressed either by sending a message to the authority of the new government or to declare the same in a public statement. The modern practice is seemed to reject the doctrine of recognition of new government. Now, the some states as USA and UK and others have adopted a course to give assent to the above pre conditions for a government merely by extending relation or cessation of relations with such government. Non-recognition of government doesn't affect the recognition of a state. A state remains recognized the only consequence of the non-recognition of the new revolutionary government is the suspension of the bilateral relations between the existing state and the new government. And as soon as the said government is to be replaced by any other government, if recognized the relations shall be re-continued on the same pattern as were with the previous government of the revolutionary one. The consequences of the recognition of a new government means to keep the relations in the same manner as were with the previous government.

Recognition of Belligerency: – Belligerency is the treatment to consider a civil war as a real war between two rival powers by other existing states The recognition by the existing states of the rebels in case of civil war in a belligerent state is said to be recognition of belligerency. In other words when a state goes in a state of belligerency where the rebels have a considerable control over a substantial territory of nation, the rebels may be recognized by the existing state. Such recognition is said to be recognition of belligerency.

Conditions: – There are following conditions by the movement of rebels to recognized by other states:

1. That the movement shall be of a general character.

2. That rebels shall have in possession a substantial part of the national territory.

3. That they are giving respect and bind themselves for the warfare laws and other international duties.

4. That they have a proper force. If the above conditions have been fulfilled by rebels then they may recognized by other existing states, and shall enjoy the international rights.

Recognition of Insurgency: – The recognition by existing states the de facto authority over a large territory of the rebels is said to be insurgency. In case of insurgency the rebels or the insurgents occupy a large part of the national territory which was formerly governed by the parent government. And if they are capable to control over that occupied part then the existing states may recognize it. Conditions: Prior to recognize the insurgency it is necessary

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for the recognizing state to satisfy the following conditions; Firstly, when insurgents occupies a considerable parent state's territory, Secondly, they have a support from the majority of the citizens of the parent state, Thirdly, they are acting under a proper command and, Fourthly, they have good control over the occupied territory. When the in case of an insurgency the above requirements have been complied with then it is on the discretion of the existing state weather to recognize or not. The recognition of an insurgency is the first step towards the diplomatic relations with their government. But if the insurgency did not succeed in their attempt after recognition by the any existing state, the recognition shall be deemed to have been extinguished.

Q. Define Extradition. What are the essentials conditions of for granting extradition? Does India have a law on Extradition? What are the essential requirement for extradition of fugitive?

Extradition is the conventional process in which a person is surrendered by one state to another on the basis of a treaty, or comity, or some bilateral arrangement between the two sovereign states. This request of extradition made by a sovereign state is usually initiated at first place because the individual demanded by the state is charged with a crime but not tried, or tried and convicted yet the accused escaped and reached the territory of the other sovereign state.

This process is also known as Rendition, which is handing over or surrendering of a convicted person or accused from one state jurisdiction to another where the accused is alleged to have committed a crime.

According to the norms of the International Law, there is a lack of a binding obligation on a state to surrender the accused demanded by another foreign state because the law upholds the principle of sovereignty which is about the right and full authority of the state over itself and its subjects without any intervention from foreign bodies.

In **Black's Law Dictionary**, extradition has been defined as "**The surrender by one state or Country to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender.**" Hence it can be summarised that Extradition is the act of sending a person from one jurisdiction to another where he/she is accused of committing a crime and is being demanded to get them tried as per the legal procedure in the sovereign demanding such person.

The purpose of extradition is to make sure that criminals are surrendered from one country to another which leads to mutual cooperation between states in control, prevention, and suppression of international and domestic criminality. At present in this era of globalization, where certain groups and individuals are conducting trade and business by various means and channels at an unprecedented manner, most of the crimes have become crossborder in nature & thus the obligation on part of the states to extradite has gained enough significance and value over the years.

In the Supreme Court case of ***Abu Salem Abdul Qayoom Ansari vs.* State *of Maharashtra [(2011) 11 SCC 214]***, Justice Sathasivam was of the view that with the tremendous increase in the international transport and communication, extradition has taken prominence since the emergence of the 21st century.

NEED AND UNDERLYING PHILOSOPHY OF THE LAW OF EXTRADITION

Crime is increasingly turning international. Many serious offences now have cross border implications. Even in cases of traditional crime, criminals frequently cross borders in order to escape prosecution. According to traditional principle of territoriality of Criminal Law, a State will not usually apply its criminal law to acts committed outside its own boundaries. However, there is a growing recognition that states should show solidarity in repression of

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criminality and co-operate in the international battle against crime. Though States refuse to impose direct criminal sanctions to offences committed abroad (except exceptional situations of extraterritorial jurisdiction), the states are usually willing to cooperate with each other in bringing perpetrators of crime to justice.

Therefore, in view of the growing internationalisation of crime, porous borders, easy mobility, a need was felt to co-operate in legal processes for transfer of criminals, with a view to ensure that no crime goes unpunished and the rule of law is upheld. The device of extradition therefore, evolved under the principle of comity of nations whereby one State surrenders a criminal to the other state for bringing him to justice in country in whose jurisdiction offence was committed. It was realised that trial for a crime ought to be conducted in the vicinity of the crime; this not only enables easy availability of evidence, but a crime punished in the very vicinity of the original offence sends out a strong signal of deterrence and restores societal equilibrium, which the crime had upset.

Extradition, therefore, is a means to resolve two apparently conflicting principles - first being that - criminal jurisdiction extends only to offences committed within geographical boundaries; Secondly, the rule that frowns over a crime/criminal going unpunished on account of jurisdictional reasons.

The law of extradition attempts to dovetail the competing imperatives of comity of nations (respect for a foreign court) on one hand, and international crime control on the other. It ensures harmonisation of these two principles, while at the same time, guaranteeing due process and protection of basic human rights of fugitives, and protection from persecution, cruel punishment, inhuman treatment and torture. Extradition law seeks to achieve this balance by laying down a procedure that is to be satisfied prior to surrender. These procedures reflect a zealous approach with respect to protection of personal liberty and the right to life. This includes a judicial inquiry by a Magistrate, followed by a decision of the Central Government. There are certain guidelines as to the exercise of this power within the Extradition Act and treaty obligations with specific states.

LEGAL STATUS OF EXTRADITION: FROM INDIAN & INTERNATIONAL LAW PERSPECTIVE

As per the Indian Law, the extradition of an escapee or fugitive from India to another nation or vice versa is dealt by the rules laid down in the Extradition Act, 1962. This law forms the legislative basis for extradition in India. The Extradition act deals with two schedules and five chapters. The Government of India till date has entered into Bilateral Extradition treaties with 42 countries to make the extradition process efficient and hassle-free.

The term Extradition Treaty is defined as per Section 2(d) of the Extradition Act which explains it as, “a treaty, agreement or arrangement with a foreign state in the relation of extradition of fugitive criminals”.

Apart from this, our country has entered into extradition arrangement with 9 countries as well. Extradition request can be made by India to any country. The countries with which India has a treaty have the obligation to consider the request due to the treaty between the two countries.

In other cases where there is non-existence of a treaty, the foreign country may or may not accept the request and may subject it as per their domestic procedure and law.

Hence the obligation for extraditing is due to the treaties and arrangement entered into by India with other nations. It needs to be understood that an Extradition is a sovereign act and in cases where there is no treaty and absence of international duty between the two sovereign states, any sort of extradition activity is dependent upon the ideas of reciprocity and comity which are an essential part of the International principles of amicable cooperation between states or nations.

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As per Section 3 of the Extradition Act, the government can issue a notification to extend the notifications of the act to the notified countries. The act further defines the ambit of what Extradition offenses are and who can be extradited as per Section 2(c) and Section 2(f) respectively.

As per the International Law conventions, a state is not under a binding obligation to surrender a fugitive to another sovereign state. There is no duty as such imposed by the International law on the states to extradite. Although there are certain basic principles governing the extradition process which are accepted and followed by several nations.

The principle of Dual Criminality: Also known as the Principle of Dual Criminality, it is one of the most significant principles governing the law of extradition. It states that extradition process can only happen when the criminal act under scrutiny is an offense in both the jurisdiction of the sovereign states.

Rule of Speciality: The idea behind this rule is to prevent blanket extradition demand made by the requesting state. The rule says that the fugitive who is extradited for a certain crime should be tried for that very crime and not some other. In the judgment given by the Apex court in the case of ***Daya Singh Lahoria vs. Union of India [(2001) 4 SCC 516],*** it was stated that a fugitive criminal brought in India under extradition treaty can only be tried for the offense provided in the extradition decree and not for any other offense. The Criminal courts in India cannot try such fugitive under any offense other than the one allowed for trial.

The principle of Proportional Punishment: Extradition may be refused in cases where there is a possibility for the extradited individual to receive a punishment out of proportion or severe in form when compared to the degree of offense. This principle is specifically invoked in order to avoid violation of Human right norm accepted globally. Where there is a possibility of the death of the fugitive in the requesting state, such request is denied as per this principle to protect and avoid violation of Human rights norms internationally.

Opportunity for Fair trial: Before the Extradition process is initiated by the requested state it is ensured that the fugitive will be given a chance to represent himself under a procedure of fair trial in the requesting state. This principle is read with the principle of non-inquiry, where the requesting state is under no obligation to subject its judicial procedures as per the punctilious evaluation criteria of the requested state. This principle isn't absolute and rigid in nature but the requested state can question the judicial procedure in the requesting state if the same is on the face of it is against the principle of law and justice.

Q. Define the term Asylum. Discuss the different kinds of Asylum with reference to some landmark cases. Distinguish between Asylum and Extradition.

Asylum is a Latin word and it derives its origin from a Greek word "Asylia" meaning inviolable place. The term asylum in common parlance means giving protection and immunity by a state to an individual from their native country. In day to day conversation, the term asylum is used interchangeably with the term refugee, there is difference between the two procedurally where a person who is still overseas seeks protection from a nation when given patronage after reaching there is given the title of a refugee whereas in asylum the person seeks the protection from a nation after reaching there and hence is known as asylee or asylum seeker.

Asylum is interpreted as a place of protection or refuge for a fugitive where he/she is given protection from trial and pursuit from their home country or to provide protection to a foreign citizen by a state against his own government. The main purpose of asylum is to give shelter to those who have well-rounded fear in their home countries of persecution. The Universal Declaration of Human Rights under article 14 (1), provides that "Everyone has the right to seek and to enjoy in other countries asylum from persecution".

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The idea of Asylum remains that of personal immunity from authoritative steps of a decision maker than that of jurisdictional authority under whose power it falls. There are mainly two forms of Asylum:

(1) Territorial Asylum: It is granted in the territorial boundary of a state providing asylum. Every sovereign state has the right to control and maintain jurisdiction on its territory, hence the decision to extradite someone or give them asylum is totally under its discretion. Thus a state has territorial sovereignty over all its subjects and aliens. This form of asylum is mainly given to people who have been accused of political offenses like sedition, treason, and espionage in their home country. Territorial asylum is based mainly on the national law of the sovereign.

(2) Extra-territorial Asylum: This form of asylum is usually granted by a state beyond its state territory and usually at places which are not a part of its physical territory. In such case, a state providing asylum in its embassy established in a foreign state is called Diplomatic Asylum. Asylum may also be granted to asylee in Warships because they are exempted from the jurisdiction of the foreign state in whose water it is operating. Such warships are under the patronage of the Flag state. The same is not the case with merchant's vessels as they are not immune to the provisions of international law. Hence, Extra-territorial Asylum is based on the framework of International Law Conventions.

The contemporary reasoning or rationale behind asylum must be understood via Rationae Materiae (Jurisdiction over subject matter) and Rationae Personae (Jurisdiction over a person). A sovereign state has the right to exclude the involvement or interference by another sovereign over its territory. This principle of sovereignty forms the basis for Territorial Asylum and by the very nature of this principle, it finds its extension to consulates, embassies, vessels, aircrafts belonging to the sovereign state.

In recent times, we have seen high profile individuals like Julian Assange and Edward Snowden seeking asylum under Ecuador and Russia respectively. In case if Julian Assange, the founder of WikiLeaks organization, he sought extraterritorial asylum under Ecuadorian Embassy after his extradition was approved by the UK to Sweden. Whereas, Edward Snowden after exposing NSA illegal spying program sought refuge under territorial asylum after entering the territory of Russia.

Rationae Personae explains that certain individuals due to immunity granted to them due to their position or capacity, are not under the jurisdictional control of a state which would otherwise have exercised jurisdiction over them due to territorial sovereignty. This form of special immunity is applicable to Diplomats, Heads of State, government officials on a certain mission etc.

Legal Status Of Asylum: National And International Level

National and International law are the only two forms which support and govern the practice of Asylum. India which is home to one of the largest refugee population in South Asia has no specific law dealing with the issue of asylum and is yet to enact one.

Refugee and asylum seekers in India are subject to various non-specific laws like The Registration of Foreigners Act, 1939, The Foreigners Act, 1946, Foreigners Order, 1948, and Passport Act, 1920. There is no mention of the term 'refugee' in any of the National laws and asylum seeker and refugees in India are subject to the definition of 'Foreigner' as a person who is not a citizen of India as per the laws mentioned above. These laws are used by the Indian government officials in order to deal with the intricacies arising out of the entry of refugees and asylum seekers in our country. Since there is no specific asylum policy in India, the government grants asylum on a case-tocase basis.

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Congress MP Shashi Tharoor in the year 2015 introduced the Asylum Bill, 2015 which aimed to provide a legal basis to the issue of asylum in India. The bill is still pending and is yet to be taken up by the parliamentarians for consideration and evaluation.

In **Louis De Raedt Vs. Union of India, AIR 1991 SC 1886** the Supreme Court had ruled that the fundamental rights of the foreigner was confined to Article 21 and did not extend to a foreigner, the right to reside and settle in India, as states in Article 19 (1) (e) Relying on the judgments and distinguishing the decision of the Supreme Court in **National Human Rights Commission Vs. State of Arunachal Pradesh, AIR 1996 SC 1234** the Madras High Court in **David John Hopkins Vs. Union of India, AIR 1997 Mad 366**, held that foreign nationals did not have any fundamental right guaranteed for the grant of citizenship of India, in which matters, the Government of India had got unrestricted power under the citizenship Act, 1955, to refuse citizenship, without assigning any reason whatsoever and that a foreign national could not claim equal rights under Article 14 with that of the Indian national.

The Supreme Court has taken recourse to Article 21 of the Constitution in the absence of legislation to regulate and justify the stay of refugees in India. In **NHRC v. State of Arunachal Pradesh, 1996 (1) SCC 742**, the Government of Arunachal Pradesh was asked to perform the duty of safeguarding the life, health and well-being of Chakmas residing in the State and that their application for citizenship should be forwarded to the authorities concerned and not withheld. In various other cases it was held that refugees should not be subjected to detention or deportation and that they are entitled to approach the U.N High Commissioner for grant of refugee status. In **P. Nedumaran v. Union of India, 1993** the need for voluntary nature of repatriation was emphasized upon and the Court held that the UNHCR, being a world agency, was to ascertain the voluntariness of the refugees and, hence, it was not upon the Court to consider whether consent was voluntary. Similarly, according to B. S. Chimni, the Supreme Court has erred in concluding in **Louis de Raedt v Union of India** that there is no provision in the Constitution fettering the absolute and unlimited power of the government to expel foreigners under the Foreigners Act of 1946.

In **Cherchi Domenico Ferdinando V. Union of India**, **AIR 1991 SC 1886**, the petitioner a foreigner who had come to India on tourist visa, granted extension to stay in India on the ground of his purported marriage with an Indian, which way, in fact, to facilitate and carry out widespread trafficking in drugs by foreign tourists. Holding that an alien had no right to reside or settle in India, the Delhi High Court upheld his deportation from India by an order of the Government.

In the International sphere, the body of laws governing Asylum are the 1951 United Nations Refugee Convention signed in Geneva and supplemented by its 1967 New York Protocol. The Geneva Convention along with the New York Protocol is considered as the Cornerstone of the International legal regime towards the protection and security of Refugees. The Convention Relating to the Status of Refugees, or 1951 Refugee Convention, is a UN treaty defining who a refugee is and sets out rights for the asylum seekers and the duties of the nation's granting it.

Overall this treaty governs how states allowing asylum seeker and refugees in their territory should treat these people. India is not a signatory to the 1951 Refugee Convention and its 1967 Protocol. Asylum is considered an International practice based on Human Rights which take the shape as a customary law with time because once it is found in some of the practices of the state without any legal basis, it creates an international obligation on the state to uphold this customary practice.

CORRELATION BETWEEN EXTRADITION AND ASYLUM

Extradition is mainly the surrendering of a fugitive by one state to another for the intention of criminal prosecution. This is a way of providing legal assistance between two sovereign states on the basis of some bilateral treaty or ad hoc agreement. Asylum, on the other hand, is about offering protection to those at risk of the legal framework

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operating in their home country. It is at times said that asylum ends where extradition initiates. Both of them are not identical and have procedural and functional differences which have evolved with time.

Extradition aims at securing criminal justice and denying safe haven to fugitive leading to a stable transnational criminal cooperation between the sovereign states. Whereas Asylum seeks to provide a safe and secure living for individuals on the run from their home country in order to avoid political persecution. Granting asylum is clearly distinguished from the order to refuse extradition even though the two can be intertwined at times because there can arise two possibilities where a person's extradition might be sought when they are an asylee or they may apply for asylum at a time when they are being asked to extradite by their home country.

Any extradition request made to a state for an asylum seeker must be in compliance with the principle of nonrefoulement in International law enshrined under article 33 of the 1951 Geneva Convention. The decision to extradite is left with the judicial authorities and the issue of asylum is dealt by the executive decision on practical and political grounds most of the times. These concepts are conflicting in nature and are not mirror image of one another which strive for their different goals and ideals. A request for asylum cannot be considered if there is an extradition case pending and the court of law, would not hear extradition case against an individual granted asylum in their country.

Q. Define 'Nationality' and briefly discuss the basic rules for determination of nationality of a person and their importance under International Law Discuss the modes of acquiring and losing nationality.

Nationality is a highly sensitive issue as it is a manifestation of a country's sovereignty and identity as a country. "It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality." "Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." "According to the practice of States, to arbitral and judicial decisions and to the opinion of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties."

What is nationality?

"The political and legal bond that links a person to a given State and binds him to it with ties of loyalty and fidelity, entitling him to diplomatic protection from that State. Nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, sentiments and interests together with the existence of reciprocal rights and duties. It is a legal concept that expresses the link between a State and members of its community. Nationality as a 'framework legal relationship': it does not establish or grant rights/duties to individuals concerned. It merely represents a necessary condition for the entitlement to these rights/duties. Nationality entitles Players to represent more than one Association

What are the consequences/effects of nationality?

- Unlimited Freedom to enter and settle in a country.
- Right to participate in public / political life of the country. e.g. right to vote; access to certain public offices.

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- Other 'minor' entitlements like diplomatic protection; benefits granted by country X to nationals of country Y, e.g. under a bilateral treaty.

- Civil/family status (in some jurisdictions where civil/family status connected with nationality).

Duties imposed by possession of a nationality

- In some countries: military service.

- Loyalty to one's country but only indirectly.

- Other 'minor' duties such as the duty to be a member of the jury in a criminal trial or duty to help with organisation of elections.

Nationality and citizenship

The terms nationality and citizenship are often confused precisely because they are so closely connected. Their present legal significance and content are of recent origin and are closely linked to a series of historical and political developments which have varied from place to place. For the purposes of international law, the connection that links individuals to a particular state is labeled a link of "nationality" notwithstanding a particular individual's ethnic background or origin, or identity. The word "citizenship" should not strictly be used to denote that an individual belongs to a state for the purposes of international law, but that an individual possesses particular rights under a state's municipal law.

Citizenship denotes the link between a person and a state or an association of states. Possession of citizenship is normally associated with the right to work and live in a country. A person with citizenship in a state is called a citizen of it. "Nationality" means the subjective corporate sentiment of unity of members of a specific group forming a "race" or "nation" which may, though not necessarily, be possessed of a territory and which, by seeking political unity on that territory, may lead to the formation of a State.

The terms "nationality" and "citizenship" emphasise two different aspects of the same nation State membership. "Nationality" stresses the international, "citizenship'' the national, municipal, aspect. Under the laws of most States citizenship connotes full membership, including the possession of political rights. It follows even from this brief survey that the terms ''national" and "citizen" overlap. **Every citizen is a national, but not every national is necessarily a citizen of the State concerned.**

"Nationality of an individual is his quality of being a subject of a certain State and therefore its citizen." It is likewise a consequence of the exclusive relevance of nationality for the purpose of the international law that distinctions made by municipal law between various classes of nationals are immaterial from the point of view of international law.

In general, it does not matter, as far as the Law of Nations is concerned, that Municipal Law may distinguish between different kinds of subjects— for instance, those who enjoy full political rights, and are on that account named citizens, and those who are less favoured, and are on that account not named citizens. The terms are not synonymous in international law but have largely converged in modern times because the people who are nationals of a state most often also make up its citizens. This convergence in modern times is "a result of the democratization of the state, the development of the idea of one nation state, the development of an industrial and capitalist society and the consequent tendency to close off his nation state".

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Citizenship is acquired by birth or by naturalisation. Nationality, on the other hand, is more a description of cultural identity than a matter of political and personal rights.

Modes of Acquiring Citizenship

By Birth – The most important mode of acquiring nationality is by birth. Nationality is conferred to a person by many States on the basis of birth. All those persons who take birth within territorial limit of a State acquire the nationality of the State. This principle is called **jus soli**. India also provides citizenship by birth under s.3 of Indian Citizenship Act.

By Naturalization – The next mode of acquiring a Nationality is by naturalization. A person requires nationality at birth. But, his nationality may later on change. When the nationality of a person changes subsequently, and he acquires the nationality of some other State, the process of acquisition is called as naturalization. A person may acquire nationality through naturalization in various ways. There are six ways which are as follows –

(1) Through marriage. Example wife assuming her husband's nationality.

(2) legitimation,

(3) Option.

(4) Acquisition of domicile,

(5) Appointment as Government official

(6) Grant on the application of the state. Adoption of the child by parents who are nationals of the other States also entitled the children to acquire the nationality of his parents.

Section 6 of Indian Citizenship Act 1955 provides that a person may acquire citizenship by naturalization upon fulfillment of certain conditions.

By Resumption – The next mode of acquiring Nationality is by resumption. Sometimes a person may lose his nationality because of certain reasons. But later he may resume, recover his original nationality after fulfilling certain conditions. Section 20 of the Citizenship rules 1956 provides a procedure for restoration of nationality.

By Subjugation – The fourth mode of acquiring nationality is subjugation. Section 7 of the Indian Citizenship Act 1955 Lays down that if any territory becomes a part of India those persons from such territory shall automatically become Citizen of India.

By Cession – The fifth mode of acquiring Nationality is Cession. When a part of the territory of a state is ceded to another State. All Nationals of the former acquires the nationality of the latter State.

By Option – The Sixth mode of acquiring Nationality is by Option. When a state is proportioned into two or more States, the nationals of the former state have an option to become the nationals of any of the successor States. The same principle applies in the case of exchange of territory.

By Registration – A person may acquire the nationality of a State through Registration. The process of registration may be different from one State to another depending upon the laws of that State. It takes place when a person becomes the subject of a state to which he was before an alien.

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Modes of loss of Nationality

By Release: Some States, such as Germany., Law provides that the citizens may lose the nationality by release. In the loss of nationality by release it is necessary to submit an application for the same. If the Application is accepted, the person concerned is released from the nationality of the State concerned.

Deprivation: Certain States have framed some municipal laws the breach of which by its nationals results in the deprivation of their nationality. Under the American laws, service in the armed forces of a foreign State also results in deprivation of citizenship.

Expiration: In certain States, on account of legislation citizenship expires due to long stay abroad. A naturalist American citizen loses his nationality by having s continuance residence for three years in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated.

Renunciation: A person may also renounce his nationality. The need for renunciation arises when a person acquires the nationality of more than one State. In such a condition he has to make a choice as to of which country he will remain national. Finally, he has to renounce the nationality of one State. In the case of double nationality of children, the municipal laws of certain States like Great Britain give them a right on coming of age to declare whether they wish to cease to be citizens of one State. The British Nationality Act of 1948 permits such a child to make a declaration of the renunciation of citizenship of the United Kingdom, but the registration of such a declaration may be withheld by the Secretary of State if made during any war in which the United Kingdom be engaged.

Substitution: Some States provide for the substitution of nationality. According to this principle, a person may get nationality of a state in place of the nationality of another State. This is called nationality by substitution whereby he loses nationality of state and acquires the nationality of another State. The British Nationality Act 1948, does not automatically entail loss of British nationality on the naturalisation of a British subject in a Foreign State. The United States nationality Act of 1952, however, entails loss of American nationality on the voluntary naturalisation of an American National in a foreign country.

In certain States, law provides that if the national of that State without seeking permission of the government obtains employment in another State, then he may be deprived of his nationality

Nationality and India

The conferment of a person, as a citizen of India, is governed by Articles 5 to 11 (Part II) of the Constitution of India. The legislation related to this matter is the Citizenship Act 1955, which has been amended by the Citizenship (Amendment) Act 1986, the Citizenship (Amendment) Act 1992, the Citizenship (Amendment) Act 2003, The Citizenship (Amendment) Act, 2005 and Citizenship (Amendment) Act, 2015. Indian nationality law largely follows the "**jus sanguinis"** (citizenship by right of blood).

Granting of citizenship

Citizenship at the commencement of the constitution of India.: Persons domiciled in the territory of India as on 26 November 1949 automatically became Indian citizens by virtue of operation of the relevant provisions of the Indian Constitution coming into force, and most of these constitutional provisions came into force on 26 January 1950. The Constitution of India also made provision regarding citizenship for migrants from the territories of Pakistan which had been part of India before partition.

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Citizenship by birth: Any person born in India on or after 26 January 1950, but prior to the commencement of the 1986 Act on 1 July 1987, is a citizen of India by birth. A person born in India on or after 1 July 1987 is a citizen of India if either parent was a citizen of India at the time of the birth. Those born in India on or after 3 December 2004 are considered citizens of India only if both of their parents are citizens of India or if one parent is a citizen of India and the other is not an illegal migrant at the time of their birth.

Citizenship by descent: Persons born outside India on or after 26 January 1950 but before 10 December 1992 are citizens of India by descent if their father was a citizen of India at the time of their birth. Persons born outside India on or after 10 December 1992 are considered citizens of India if either of their parents is a citizen of India at the time of their birth. From 3 December 2004 onwards, persons born outside of India shall not be considered citizens of India unless their birth is registered at an Indian diplomatic mission within one year of the date of birth.

Citizenship by registration: The Central Government may, on an application, register as a citizen of India under section 5 of the Citizenship Act 1955 any person (not being an illegal migrant) if s/he belongs to any of the following categories:

- a person of Indian origin who is ordinarily resident in India for seven years before making application under Section 5(1)(a) (throughout the period of twelve months immediately before making application and for six years in the aggregate in the eight years preceding the 12 months).
- a person of Indian origin who is ordinarily resident in any country or place outside undivided India;
- a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;
- minor children of persons who are citizens of India;
- a person of full age and capacity whose parents are registered as citizens of India.
- a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration;
- a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for one year before making an application for registration.

Citizenship by naturalization: Citizenship of India by naturalisation can be acquired by a foreigner (not illegal migrant) who is ordinarily resident in India for 12 years (throughout the period of 12 months immediately preceding the date of application and for 11 years in the aggregate in the 14 years preceding the 12 months) and other qualifications as specified in Third Schedule to the Citizen Act.

Overseas Citizenship of India

The Overseas Citizenship of India (OCI) scheme was introduced by amending The Citizenship Act, 1955 in August 2005. The scheme was launched during the Pravasi Bharatiya Divas convention in Hyderabad in 2006. Indian authorities have interpreted the law to mean a person cannot have a second country's passport simultaneously with an Indian one even in the case of a child who is claimed by another country as a citizen of that country, and who may be required by the laws of the other country to use one of its passports for foreign travel (such as a child born in the United States or in Australia to Indian parents), and the Indian courts have given the executive branch wide discretion over this matter. Therefore, Overseas Citizenship of India is not an actual citizenship of India thus does not amount

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to dual citizenship or dual nationality or anyone no longer to use Indian IDs after OCI. Moreover, the OCI card is not a substitute for an Indian visa and therefore, the passport which displays the lifetime visa must be carried by OCI holders while traveling to India

Q. What do you mean by Double Nationality? Discuss Nationality of a Married Woman.

'A' a child is born in England. His parents are the nationals of France at the time of his birth. The result is that he acquires double nationality. According to Principle of *'Jus Soli'* recognised in English Law, he gets the nationality of England on account of his birth there. He also gets the French nationality because according to French Law *'Jus Sanguinis'* the child gets the nationality of his parents (Father as a rule) as it is at the time of the child's birth.

Double Nationality also results when a person acquires another nationality on the basis of adoption, legitimation, marriage (of a woman), Naturalisation etc. so long his original nationality remains intact, so long as to choice to select one of the two is not exercised, the person continues to have double nationality.

The Advantages of Dual Nationality

Benefits and privileges: Dual nationals can receive the benefits and privileges offered by each country. For example, they have access to two social service systems, can vote in either country and may be able to run for office in either country, depending on the law. They are also allowed to work in either country without needing a work permit or visa and can attend school in either country at the national tuition rate.

Two passports: As a dual national, you are allowed to carry passports from both countries. For example, if you are a U.S. national and also a national of New Zealand, you can travel more easily between the two countries. Having a national's passport eliminates the need for long-stay visas and questioning about the purpose of your trip. It also guarantees right of entry to both countries, which can be especially important if you have family to visit, are a student or do business in either country.

Property ownership: Another benefit of dual Nationality is the ability to own property in either country. Some countries restrict land ownership to nationals only, and as a legal national of two countries, you would be able to purchase property in either – or both – countries. If you travel frequently between the two countries, this might be especially useful since property ownership might offer a more economical way to live in two places.

Cultural education: As a dual national you'll reap the benefits of being immersed in the culture of two countries. Some government officials are also fond of dual Nationality and see it as a way to promote the country's image as a prime destination for tourists. Perhaps the best upside is self-satisfaction of learning about the history of both countries, a new language, and different way of life.

The Drawbacks of Dual Nationality

Dual obligations: As a dual national, you are bound by the laws of both countries. For example, if you are a national of the United States and a country with mandatory military service, you can lose your U.S. Nationality under certain circumstances, such as if you serve as an officer in a foreign military that is engaged in a war against the United States. In general, U.S. policy recognizes that dual nationals might be legally obligated to fulfill military obligations abroad, and many can do so without jeopardizing their U.S. national status, but it is important to research each situation carefully.

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Double taxation: The United States imposes taxes on its nationals for income earned anywhere in the world. If you are a dual national living abroad, you might owe taxes both to the United States and to the country where the income was earned. Income tax treaties are in effect, however, between the United States and many other countries that reduce or eliminate a U.S. national's tax liability in the United States. A treaty between the United States and New Zealand, for example, overrides the income tax laws of each country to avoid double taxation. Even so, dual nationals may be required to file U.S. tax returns. Because tax laws are complicated and can change from year to year, be sure to consult with a qualified tax accountant.

Security clearance: Depending on your career path, dual Nationality can be a disadvantage. If you are seeking a position with the U.S government or access to classified information, having dual Nationality can prevent you from gaining the security clearance you need to work in these fields. Those born into dual Nationality may encounter fewer problems than those who actively sought it out.

Complicated process: Sometimes dual Nationality happens automatically, as is the case when a child is born in the United States to foreign parents. Other times, however, the process can take many years and can be extremely expensive. To become a U.S. national, you must live in the United States as a permanent resident continuously for five years (or three years if you are married to and living with the same U.S. national), and you must pay $1,225 to apply for permanent residency and then another $725 to file an application for Nationality, as of 2017. That does not include the cost of an immigration lawyer, a professional who can be helpful in achieving Nationality.

HAGUE CONVENTION ON DOUBLE NATIONALITY

The Hague Conference of 1930 made an attempt to clarify the position on double nationality. Article 3 of the convention provided that if an individual possesses nationality of two or more nations, then it is open to each nation to claim him as its national so long as he does not opt to renounce on of them.

As per Article 4 a State may not afford diplomatic protection to one of its national against a State whose nationality such person also possesses.

Article 5 states that within a third State, a person having more than one nationality shall be treated as if he had only one. The one which is considered to be more effective based on facts and circumstances of each case like principle residence etc.

Article 6 states that a person possessing two nationalities acquired without any voluntary act on his part may renounce one of them with the authorisation of the State whose nationality he desires to surrender.

NATIONALITY OF A MARRIED WOMAN

Article 8 to 11 of the Hague Conference of 1930 provides for nationality of a married woman. This position is also clarified by Article 1 to 4 of Convention on the Nationality of Married Woman, Newyork, 1958. Both this conference enumerate the principle that if a woman marries then she will automatically acquires nationality of her husband. She can also retain her birth nationality if she wishes to keep so.

Before the *Convention on the Nationality of Married Women*, no legislation existed to protect married women's right to retain or renounce national citizenship in the way that men could. Women's rights groups recognized a need to legally protect the citizenship rights of women who married someone from outside their country or nationality. The League of Nations, the international organization later succeeded by the United Nations, was lobbied by women's rights groups during the early 20th century to address the lack of international laws recognizing married women's rights of national citizenship. The Conference for the Codification of International Law, held at The Hague in 1930,

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drew protests from international women's rights groups, yet the League declined to include legislation enforcing married women's nationality rights. The League took the position that it was not their role, but the role of member states, to deal with equality between men and women.

The International Women's Suffrage Alliance (IWSA, later renamed the International Alliance of Women) launched a telegram campaign in 1931 to pressure the League of Nations to address the lack of legislation. Women from around the world sent telegrams to the League of Nations as a protest. The League made the concession of creating an unfunded Consultative Committee on Nationality of Women.

The Pan-American Conference in Montevideo passed a *Convention on the Nationality of Women* in 1933. It was passed by the Pan American Conference at the same time as the *Treaty on the Equality of Rights Between Men and Women*. These were the first pieces of international law to "explicitly set sexual equality as a principle to be incorporated into national legislation" which was required of countries ratifying the convention and treaty. Lobbying by the American National Women's Party has been credited with this legislation. However, neither the International Labour Organization (ILO) nor the League of Nations passed any legislation on the issue during the interwar years.

The issue of the nationality of married women was a leading women's rights issue facing the United Nations after its establishment. The United Nations Commission on the Status of Women was created, and made it a priority of their agenda, launching a study in 1948. The Commission recommended to the United Nations Economic and Social Council that legislation be drafted to give women equal rights as set out in Article 15 of the Universal Declaration of Human Rights. The *Convention on the Nationality of Married Women* entered into force on 11 August 1958.

As of 2013, the convention has been ratified by 74 states. It has been denounced by the ratifying states of Luxembourg, Netherlands, and United Kingdom.

The Convention was concluded in the light of the conflicts of law on nationality derived from provisions concerning the loss or acquisition of nationality by women as a result of marriage, divorce, or of the change of nationality by the husband during marriage. It allows women to adopt the nationality of their husband based upon the woman's own decision, but does not require it.

The Convention seeks to fulfill aspirations articulated in Article 15 of the Universal Declaration of Human Rights that 'everyone has a right to a nationality' and 'no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality'.

As per Article 1 of the Convention Woman's nationality not to be automatically affected by marriage to an alien.

Article 2 states that Acquisition or renunciation of a nationality by a husband not to prevent the wife's retention of her nationality.

Article 3 enshrines that specially privileged nationality procedures to be available for wives to take the nationality of their husbands.

Q. Define the term Intervention. State different kinds of Intervention. When is intervention justified.

Normally every state is deemed to possess independence and 'sovereignty' over its subjects and its affairs within its territorial limits. In the interests of the international community, every state has accepted restrictions on its liberty of actions. Therefore, it is probably more accurate today to say that the sovereignty of a state means the residuum of power which it possess within the confines laid down by international law. In reality, sovereignty is also largely a

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matter of degree. Some states enjoy more power and independence than other states. 'Sovereignty' is, therefore, a term of art rather than a legal expression capable of precise definition. 'Sovereignty' is the possession of supreme power unlimited by any other state resulting in autonomy within a state and independence in relation to other states. To Soviet scholars, sovereignty is "the independence of the state of any other state, this independence amounts to the right to decide freely and according to its own judgement all its domestic and foreign affairs without interference on the part of other states".

One of the oldest duties of states, enshrined both in customary international law and in numerous multilateral conventions, is the basic obligation of a state to abstain from intervention in the internal and external affairs of any other state or in the relations between other states. International Law generally forbids such intervention, which in this particular connection means something more than mere interference and much stronger than mediation or diplomatic suggestion. According to International Court of Justice (ICJ), an intervention is prohibited by international law if (a) it impinges on matters as to which each state is permitted to make decisions by itself freely; and (b) it involves interference in regard to this freedom by methods of coercion, especially force. A notable historical example of dictatorial intervention for which there was ostensible justification—was the joint demarche in 1895 by Russia, France & Germany to force Japan to return to China the territory of Liaotung which she had extorted from the Chinese by the Treaty of Shimonoseki. As a result of this intervention, Japan was obliged to retrocede Liaotung to China, a fateful step which led ultimately to the Russo-Japanese War of 1904-56.

In 1966 the General Assembly of the United Nations resolved that, no state has the right to intervene, directly or indirectly, for any reason whatever in the internal or external affairs of any other state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic or cultural elements are condemned.

It means there may be interference with states not amounting to force and not directly connected with national territory, and that international law prohibits any coercion which indirectly subverts a state's legal competence or jurisdiction, including coercion applied by a state to its own nationals in order to instigate the families of those persons naturalised or resident in foreign countries to pursue a course of action. The United States protested in 1923 against the threatened confiscation by Greece of the property of Greek citizens whose sons, naturalised in America and did not return to Greece for military service. It means: (i) A state must not coerce another by organising hostile expeditions upon its territory, (ii) Acts not involving force but which are calculated to impair the authority of another sovereign must equally be condemned by international law e.g. the undertaking or encouragement of the authorities of a state of activities calculated to foment civil strife in another state, or the toleration by the authorities of a state of organised activities calculated to foment civil strife in another state.

The undertaking or encouragement by the authorities of a state of terrorist activities in another state, or the toleration by the authorities of a state of organised activities calculated to carry out terrorist acts in another state. In connection with his formulation there is a resolution of the General Assembly on the Essentials of Peace, calling upon every nation "to refrain from any threats or acts, direct or indirect, aimed at impairing the freedom, independence or integrity of any state, or at fomenting civil strife and subverting the will of the people in any state", (iii) A state also offends international law by allowing seditious elements from other states or its own residents to organise rebellion in friendly states. In 1934, the Council of the League of Nations resolved "that it is the duty of every state neither to encourage nor tolerate on its territory any terrorist activity with a political purpose; that every state must do all in its power to prevent and repress acts of this nature and must for this purpose lend its assistance to Govts. Which request it".

Kinds of Intervention: Prof. Winfield refers to three kinds of active, material interventions and these are internal, external and punitive intervention.

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i. Internal Intervention: In this kind of intervention a state interferes between the disputing sections of other state, in favour either of the legitimate government or of the insurgents. In 1936-38, during the Civil War in Spain, Germany and Italy intervened on the side of General Franco. Likewise, the Govt, of Red China intervened in the Korean War when the UN forces crossed the 38th parallel. Again, the Russian intervention in the uprising of Hungarian people in October 1956 was yet another instance of internal intervention.

ii. External Intervention: In this a state interferes in the relations generally the hostile relations of other states, as when Italy entered the Second World War on the side of Germany, and against Great Britain. It is in other words, an intervention in the foreign affairs of another state. This kind of intervention is tantamount to the declaration of war.

iii. Punitive Intervention: This is the case of a reprisal, short of war, for an injury suffered at the hands of another state. It is in the nature of a retaliation against the guilty state. It is frequently carried out by stronger nations towards weaker nations. A pacific blockade to compel the observance of treaty engagements or to redress some breach of law affords an illustration of this type of intervention.

Conditions during which Intervention is Justified

The fact that certain varieties of intervention have been justified by outstanding jurists reflects the growing perturbation on the part of writers in international law who would like to perpetuate a theoretical doctrine of absolute prohibition of intervention, yet who are drawn in the direction of approving some form of intervention because it strikes them as desirable from humanitarian considerations, from a political point of view, or, some times, because logic appears to dictate the correctness of a particular employment of intervention, despite the overall legal prohibition extent.

According to Prof. Brierly, the strictly legal occasions of an intervention may be brought under three heads, viz., self-defence, reprisals and the exercise of a treaty right. Such interventions as take place by right must be distinguished from others. Wherever there is no right of intervention, an intervention violates either the external independence or the territorial or personal supremacy.

According to Oppenheim and Starke, it is claimed that following are, broadly expressed, conditions in which a state has at International Law a legitimate right of intervention:

1. Enforcement of Treaty Rights

2. Self Defence or Right to Exist

3. Right Over Protectorate

4. In pursuance of UN Charter

5. In violation of International Law

6. In protection of Persons and Property Abroad

7. On Humanitarian Ground

8. Intervention in Civil War.

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1. Enforcement of Treaty Rights: If a given state has been restricted by treaty either in its territorial supremacy or in its external independence and violates the restrictions imposed, the other party or parties to the agreement would possess a lawful right of intervention. A state is justified in interfering in the affairs of another state if the provisions of any treaty oblige the former to preserve the independence or neutrality of the latter. Such intervention does not violate any right of independence because the state that suffers has conceded such liberty of interference by treaty. The Treaties of London of the years 1831 and 1839 guaranteed the integrity and neutrality of Belgium, but the invasion of Belgium by Germany in 1914 led to the intervention of Great Britain in pursuance of treaty right by declaring war on Germany. It was again in pursuance of Art of the Treaty of London of 1863 that France, Russia and Great Britain, who had guaranteed the independence of Greece, interfered in the affairs of Greece in 1916 and 1917 and re-established constitutional government. King Constantine had to abdicate, and his second son, Alexander, was installed as king of Hellences. Again by the Treaty of Havana, 1903, Cuba agreed that U.S. might intervene for the preservation of Cuban independence. In 1906, American intervened in the affairs of Cuba under the Art of the Havana Treaty of 1903. A similar treaty existed between U.S.A. and Panama under which U.S.A. intervened in Panama in 1904.

2. Self-Defence or Right to Exist: The right of self-preservation is more sacred than the duty of respecting the independence of other states. A state has a right to interfere in the affairs of another state where the security and immediate interests of the former are compromised. Interventions, therefore, in order to ward off imminent danger to the intervening state are justified by the force of circumstances. The danger must be direct and immediate, not contingent and remote. The leading case of the Caroline sets out the principles that govern the doctrine of self-preservation.

Since the beginning of international law, self-preservation has been considered as a sufficient justification for violation of the rights of other states. But there is no such thing as fundamental right of self-preservation. The doctrine, however, developed as corollary of the emphasis laid on the sovereignty of the state in the eighteenth and nineteenth centuries.

Violations of the rights of other states in the interests of self-preservation are not allowed, except rarely, in cases of necessity. Mr Webster, the American Secretary of State, defined the scope of "necessity" in the following words: "the danger must be instant, overwhelming, leaving no choice of means and no moment for deliberation, before a state can invoke the doctrine; of necessity of self-preservation".

Intervention thus involved a conflict of two fundamental principles of international law, the right of self-govt. or "independence" on the part of the state against which the complaint was brought. For the solution of the conflict international law had, at the time, no acceptable remedy.

It was with the outbreak of the French Revolution that the conflict of the two principles of self-defence and independence began to take its modern shape. Austria and Russia saw in the revolution a threat to the peace of all Europe. They had the right, as they saw it, to intervene to prevent the spread of ideas which would incite all Europe to revolt and anarchy. On the basis of this principle Austria intervened to suppress uprising in Italy in 1821, France intervened for a similar purpose in Spain in 1823, and plans were made to assist the Spanish govt, in recovering its rebellious colonies.

Intervention now succeeded to intervention, and it is difficult to classify the numerous cases which fill the pages of history of Europe during the second and third quarters of the nineteenth century. To intervene or not to intervene was a matter which each state decided for itself according to its military power and its national interests. The right of intervention and the obligation of non-intervention fell within the field of political action, and jurists could do little

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more than find justification for what govts, were doing by referring to the necessity of a summary procedure which, as one jurist expressed it, "may sometimes snatch a remedy beyond the reach of law"

3. Right Over Protectorate: A state has a right to intervene in the affairs of a state over which it holds a protectorate. If protectorate acts and behaves in such a manner as to contravene against the interest of Protecting state, the protecting state has the right to intervene in the affairs of protectorate, e.g. The American intervention in and occupation of Haiti in 1915 was as assertion of a protectorate.

4. In pursuance of UN Charter: The Covenant of the League of Nations as well as the Charter of the United Nations by its enforcement action under Chapter VII, have provided for the collective intervention of member states, for the purpose of restraining states which disturb the peace of the world. Moreover, the Covenant contemplated collective intervention in certain events against states which were not members of the League. The Charter of the UN imposes upon the organization the duty of ensuring that states which are not members shall act in accordance with its principles so for as this is necessary for the maintenance of international peace and security.

Lawful intervention would occur in the case of collective action undertaken by an international organ on behalf of the community of nations or for the enforcement of the principles and rules of international law. Some writers, notably, Richard A. Falk, have advocated or justified international (United Nations) intervention in civil wars, asserting correctly that such conflicts may easily escalate into international, regional, or even global wars. Yet the fact remains that United Nations intervention of any consequence could only take place if agreement prevailed among the Great Powers. And if such agreement should exist, then a given civil war would not be likely to constitute a danger to world peace calling for international intervention. Collective intervention took place under the authority of the UN to stop (a) the Korean War in 1950; (b) The Suez Canal crisis in 1956, (c) The Congo Crisis in 1960, and (d) The Gulf Crisis in 1991.

5. In violation of International Law: If a state or a group of state violates international law; customary or conventional, the other states may intervene in the affairs of that state and may compel them to submit to the rules, to observe rules and to behave according to the rules. Thus, if a belligerent proceeded to violate rights of neutral states during a conflict, the neutrals would have rights of intervention against the violating belligerent state.

If, for instance, a state sought to extent its jurisdiction over the merchantmen of another state on the high seas, not only would this be an affair between the two states concerned, but all other states would have a right to intervene because the freedom of the open sea is a universally recognized principle.

6. In Protection of Persons and Property Abroad: A state may intervene to protect the rights and interests and the personal safety of its citizens abroad. If the citizens of a state are mistreated in another state, the former, it has been asserted, possesses a lawful right to intervene on behalf of its citizens after all available peaceful remedies have been exhausted.

This is a subject of much discussion and the most frequently cited instances are the interventions in Nicaraguan internal affairs on the part of the United States, beginning in 1909, on grounds of protecting American private interest and citizens in that republic, and the collective intervention in China in 1900 through the joint military and naval expedition sent there by Germany, France, Great Britain, Italy, Austria-Hungary, Russia, Japan, and the United States. The present writer cannot subscribe to the belief that such actions represent lawful intervention— they ought to be viewed as prohibited dictational intererence in the affairs of other states.

A typical example of resort to force against alleged violations of international law by another state, is the decision on the part of a state to send armed troops abroad for the purpose of protecting its nationals. In such a case the justification normally invoked by the invading state was that the territorial state had failed to take all the

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precautionary and other measures necessary for safeguarding the life and property of foreigners, and it, therefore, proved imperative to substitute for this omission, and exercise the requisite measures of control. Plainly, this sort of justification fends itself to may abuses.

7. On Humanitarian Grounds: Intervention in the interest of humanity is legally permissible. During the " nineteenth century, numerous interventions took place upon "grounds of humanity". The Ottoman Empire, seeking to retain its hold over its rebellious vassal states and subjects, resorted to methods of suppression which shocked the conscience of Europe. In 1827, the Great Powers jointly intervened to secure the independence of Greece. In spite of the admission of the Ottoman Empire to participate in the public law and concert of Europe in 1856, intervention again took place in 1860 to protect the Christians of Mount Lebanon, in 1878 to secure the deliverance of the Balkan States, and in 1891-1896 following massacres in Armenia and in Crete. Jurists discussed at length the possible technical grounds in justification of these interventions, since they constituted an interference in the domestic government of the misbehaving state and a violation of its right of independence. But while differing as to the technical grounds of intervention jurists found no difficulty in responding to the higher appeal of a common humanity, and in conceding to a state the same right to protect the moral feelings of its people, shocked by the accounts of the massacres of their correligionists, that it had to protect their material interests.

In late November 1964, rebel forces in the eastern Congo had captured or isolated hundreds of white residents, increasing numbers of which were killed. The United States government agreed, for humanitarian reasons, to supply air transport for Belgian paratroopers and for the evacuation of white refugees. Within four days, this operation had been completed and two days later all paratroopers had also been removed from the Congo. This intervention resulted in wide spread criticism from African members of the United Nations and an unsuccessful attempt was made by eighteen of them to have the Security Council condemn the rescue operation as "armed aggression". In retrospect, however, the episode presents one of the clearest modern instances of true humanitarian intervention and should be viewed as lawful in character, in view of the conditions then existing in the "target state" and of the total inability of the incumbent government to protect the refugees in question.

8. Intervention in Civil War: Before the Spanish Civil War (1936-38), the principle was generally approved that revolution or civil war or other grave emergency in another state might be cause for intervention if the safety of state desiring to intervene were affected by the conflict, or emergency, or if there were serious interference with the exercise by it of some rights which should be respected. But in 1936, the European Great Powers departed from the principle by agreeing not to intervene in the Spanish Civil War. In October- November 1956, after the signing of the United Nations Charter, Great Britain and France did jointly intervene by force against Egypt in the Suez Canal Zone in the Israeli-Egyptian conflict, under claim of a threat to their vital interests. This action was condemned by majority of the countries in the UN General Assembly as a breach of the United Nations Charter. It was maintained that, as Egypt had not been guilty of any actual armed attack within the meaning of article 51 of the Charter, recourse to an alleged right of collective self-defense was not justified. For similar reasons, the United States action in landing forces in Beirut in July 1958, on the invitation of the President of Lebanon, to assist that country against an alleged threat of insurrection stimulated and assisted from outside, and to protect American lives and property, was not in strict sense a measure of self-defense authorized by article 51.

Q. Explain the principles of International Law relating to amicable means of Settlement of International Disputes

For the settlement of an international dispute there are following amicable means:

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1. **Negotiation: –** The settlement of the international disputes by the disputant states themselves by negotiation is said to be settlement of the disputes by negotiation. In other words when there a dispute arises between two or more states then to avoid the chances of war or violence they tends to conduct negotiation for the matters to be settled. The negotiation is to be taken by the political representatives of the disputant countries, without involving any third or non-concerned country.

2. **Good-offices: –** The act or arrangements taken by a third party to bring disputant parties for negotiation or to settle dispute between them by any peaceful means is said to be Good-offices. In case of Good-offices the third merely renders services to bring the disputant parties to peace full means of settlement of disputes. Here the third party does not give any suggestions or take part in the meetings as to be held between the disputant parties. Shortly speaking, in case of good offices whenever the parties to dispute come to peace full of settlement of dispute the duty of the third party finishes.

3. **Mediation: –** The act of participating and in the discussions and giving suggestions to settle a dispute between two parties by a third party is said to Mediation. In other words, mediation is the method to settle a dispute where any third party actively takes part in the sessions of dialogues or negotiations held between disputant party as to resolve the dispute. In case of mediation the mediator should consider the matter of compromise between the parties rather to encourage the strict letter of law.

4. **Inquiry: –** The process to ascertain the facts of disputes by a commission of imperial investigators is said to inquiry. This mean is intended to find out the questions of law and mixed questions of law and fact involved in a dispute. The only function of the commission is to bring in light those facts, which are the root cause for the alleged dispute, and to investigate the question of law and mixed questions of law and fact.

5. **Conciliation: –** The process of referring a dispute to a commission; for the purpose of finding out facts and to prepare a report containing proposals for the settlement of that dispute, is called conciliation. In case of conciliation the commission is to take two tasks, at first, it shall ascertain the facts of the dispute and secondly, it shall prepare a report which shall reveal that the possible measures to settle the dispute. But the proposals prepared by the commission have no binding force upon the parties. The parties can disagree with the proposals.

6. **Arbitration: –** The process of referring the dispute; by the mutual consent of the parties to a body of persons or to a tribunal for a legal decision is called as arbitration. The essential ingredient of arbitration is the consent of disputant parties to the dispute. In other words, the referring of the dispute to a Court of Arbitration is dependent on the sweet-well of the parties. International law recognizes a court for arbitration known as Permanent Court of Arbitration. But in fact it is neither permanent nor a court.

7. **Judicial Settlement: –** The process of settling a dispute; by the International Tribunal in the light of the provisions of International Law, is said to be Judicial Settlement. For Judicial Settlement there is a judicial organ in international law, known as International Court of Justice. Both the award given by the arbitration tribunal and decision given by the International Court of Justice are comes in the ambit of Judicial Settlement. Like in arbitration, in case of referring the dispute to the International Court of Justice the consent of both the parties are necessary to be given. International Court of Justice shall take its proceeding in the light of the rules of International law, and its procedure is governed by the a statute known as the Statute of International Court of Justice. International Court of Justice plays a very important rule in the settlement of international disputes.

8. **Security Council: –** A dispute may be settled by a principal organ of the United Nations, known as Security Council. The Council is consisted of fifteen members. Five members are permanent while the remaining ten members are non-permanent members. Wide powers have been entrusted to the Council for the settlement of

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the disputes, which tend to endanger world peace and security. There is a number of measures to be taken by the Council for the settlement of the disputes.

9. **General Assembly: –** General Assembly is another principal organ of the United Nations. The Assembly has no specific means to settle the dispute, rather it has general powers to settle the international dispute. It has the power to discuss and to suggest better means for the peaceful settlement of the disputes.

Conclusion: – Briefly speaking, International Law intends to overcome the chances of war and violence, and believe to solve the disputes on the merits of political, diplomatic and judicial bases. To avoid the chances of breaking out of wars it provides certain measures and means. Among which above are the amicable means to settle the disputes. But international law also recognizes certain coercive or compulsive means to settle the disputes in extra-ordinary cases where the International peace and security has been endangered.

Q. Write a note on International Court of Justice.

International Court of justice – ICJ is a principal organ under International law, created to resolve the disputes between the states. It bears a great responsibility in resolving International disputes. International Court of Justice is the successor of Permanent Court of Justice.

The idea to create an International court to deal with International dispute first arose during the Hague Convention. After the First World War and creation of League of Nation, the idea was converted into reality and Permanent Court of International justice was established. The court came into operation in 1922.

The purpose to create International court was to settle the disputes between states and to establish peace globally. When there is a dispute between two nations, the difficulty arises with regards to the jurisdiction. To resolve this issue, the international court was established.

Permanent Court of International justice ceased functioning in the Second World War from the year 1940. There were some limitations in PCIJ, so it was dissolved in 1940. During the San Francisco Conference, a discussion was made where the members felt a need of International Tribunal to resolve international disputes. It was decided to create International Court of Justice in the place of Permanent Court of Justice. ICJ came into operation in 1945.

Composition of International Court of Justice

The International court of justice is composed of 15 judges and not more than one judge shall be elected from one state. The judges are elected for a period of nine years. The judges represent the legal system of the world.

Judges should be a person of high moral standard and should possess the qualification that is required in their respective countries for the appointment of highest judicial offices or jurisconsults of recognized competence in International Law. During the term of office, no judges should engage in any political or administrative functions or any other occupation of professional nature.

The President and Vice President of the court are elected by the court for a term of three years. The court is assisted by a Registry and headed by a Registrar. Elections are held in every three years for five vacancies. Election is held simultaneously both in General Assembly and in the Security Council. Voting in each is done independently. In order to get elected, candidate must obtain majority of votes from each forum.

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The court can also establish chambers composed of three or more judges. Such Chambers were constituted upon the request of the parties. The court can also establish a special chamber for environmental matters. A judgment given by a chamber is considered as a judgment of the Court.

The statute provides that where there is a judge of the nationality of one of the parties is sitting on the bench, and then in order to maintain equality, the opposing party may choose an Ad hoc judge of his nationality. Each of the party may choose such a judge of their respective nationality if both of them do not have its national judge sitting on the bench. The judges so chosen have the same rights and duties as the members of the court during the proceeding.

Jurisdiction of ICJ

The International Court of Justice possesses two kinds of jurisdiction.

- Contentious Jurisdiction
- Advisory Jurisdiction

Contentious Jurisdiction: It provides that the court can decide the case with the consent of both the parties. Court cannot initiate any proceeding merely because one party has filed a case. The consent of both the parties is required to initiate a proceeding.

Contentious Jurisdiction is classified into three categories.

1. Voluntary Jurisdiction
2. Ad hoc Jurisdiction
3. Compulsory jurisdiction

Voluntary Jurisdiction is that jurisdiction where the parties by virtue of an agreement or treaty between them decided that if any dispute arises, it should be referred to the Court for settlement.

Ad hoc Jurisdiction is that jurisdiction where parties approach to the court which has no jurisdiction in the case.

Compulsory Jurisdiction is that jurisdiction in which the court is entitled to take up the case without the consent of the parties.

Advisory Jurisdiction: It provides that the court has jurisdiction to give advisory opinion to the parties. The court only gives advice to the party. It does not require the consent of the party as no proceeding is initiated. The court gives advice when any International institute asked for the opinion of the court. The opinion is not binding on the parties.

Law Applied by the Court: The International Court of Justice decides the matters in accordance with the International Law. According to the statute, the court can apply;

1. International Conventions which are recognized by the member states.
2. International Custom.

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3. General principle of law recognized by civilized states.

4. Judicial Decision and teaching of highly qualifies publicist of various nations.

5. The court can also apply the principle of equity if the parties are agreed to it.

Enforcement of Judgment: International Court of Justice aims to resolve the dispute between nations. The state parties in case of any dispute approach to ICJ to resolve the matters. The judgment given by the court is binding on the parties.

Each member of the United Nation has to comply with the decision of the International Court of Justice in any case to which it is a party.

If any party fails to comply with the decision of the court, the other party may recourse to the Security Council. The Security Council may if it deems necessary can make recommendations or measures to be taken to give effect to the judgment.

Contribution of International Court of justice in International Law

International Court of Justice was established with a view to resolve international matters and to maintain international peace. Though the court cannot contribute directly towards the international law, it has contributed indirectly through the clarification and development of rules of the principle of International Law.

So, the court contributes to the international law in two ways;

1. By settling the disputes

2. By developing rules for International law

The court has contributed immensely towards the International law despite the fact that it cannot create any new law, the court can interpret, clarify, amend the rules of International law through its Judgments.

The decision of the court has also contributed in the way of guidelines to the states that they have to follow for their international conduct.

Landmark Judgments by ICJ

International Court of Justice has rendered some landmark judgments which have set guidelines for International law. The Court has played a vital role in developing laws against the use of force and to protect Human Rights.

Nicaragua vs. United States [1986 I.C.J. 14]

The case involved military and paramilitary activities carried out by United States against Nicaragua. Nicaragua has approached to the International Court of Justice against United States.

Nicaragua has alleged that in 1979 there government was replaced by a new government and US supported the new government initially but after that their attitude was changed. In 1981, US stopped its aid to Nicaragua and decided to plan and undertake activities against Nicaragua. Armed activities were carried out against the new government and Nicaragua alleged that US is the main culprit behind this activities because US is effectively in control of Contras. Nicaragua also alleged that some attacks against the new government were directly headed by US to destroy the

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new government. Nicaragua attack included the mining of Nicaragua ports, and other ports, oil installation and a naval base. Nicaragua alleged that aircrafts belonging to United States flew over Nicaragua territory to gather intelligence and to intimidate the population.

United States initially refused to accept the jurisdiction of ICJ over this issue and refused to be present at the proceeding. The United States however in a hearing stated that the attacks were in course of self – defense as guaranteed by Article 51 of UN Charter.

The court has investigated into the matter and held that US violated its customary international law obligation not to use force against any state when it directly attacked Nicaragua and the court also stated that the US could not justify its action on the basis of collective self-defense.

The court also found that the United States also carried out high altitude flight over Nicaragua territory and certain low altitude flights complained of as causing sonic booms. It held that a State's sovereignty extends to its internal waters, territorial sea and air space above its territory. Extension from the territorial limit violates the Customary International Law.

Belgium vs. Senegal [ICJ GL No 144, ICGJ 437(ICJ 2012)]

This case was filed under the International Court of Justice against the judicial decision of Senegal which is a violation of the Convention against Torture and Inhuman Treatment.

The Former Dictator of Chad, Hissene Habre is accused of political killing and torture when he ruled Chad. After that, he fled to Senegal. Seven victims of his torture filed a criminal complaint against him in the Senegal Court where the court initially started the investigation but due to political interference, the court dismissed the case that it did not have jurisdiction over this case.

Other victims, including Belgium citizens filed a case in Belgium against Habre where Belgium Court has requested Senegal court for his extradition. Senegal court due to lack of jurisdiction referred the matter to African Union for a decision how Habre should be tried. AU asked Senegal to prosecute Habre and Senegal agreed to it but raised obstacle to obstacle in trial.

Belgium filed an application against Senegal in International Court of justice after Senegal failed to extradite Habre and continued to stall in the trial.

The International Court of Justice issued its ruling with the majority of judges finding Senegal in violation of the Convention against torture by failing to make inquiry in the case and by failing to submit the case to competent authorities for prosecution. The court finally held that Senegal must without any further delay submit the case of Hissene Habre to its competent authority for the purpose of prosecution if it does not extradite him.

Conclusion: International Court of Justice aims to resolve the issue between nations and to maintain peace in the world. In every country, there is a judicial system, an arbitration to resolve its matters within its territory. But when the dispute involves two countries or more than two countries then difficulty arise as which country has jurisdiction to deal with the matter and this constitutes another dispute. Therefore, to tackle with this difficulty, the International Court of Justice was created. Its purpose is to settle the disputes between countries who are members of the UN. Even non-member state can also appeal to ICJ. International Court of Justice has immensely contributed towards international law by not only resolving the disputes but it has also interpreted laws and given clarity to them through its judgments. ICJ has provided landmark judgments on various social issues in the world. ICJ, as a principal judicial organ has contributed a lot to maintaining peace in the world.

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Q. Write short notes on Pacta Sunt Servanda

Are states really bound to fulfill the commitments they undertake pursuant to a bilateral or multilateral treaty once it has been ratified and then enters into force? According to pacta sunt servanda, they are. This Latin phrase, which may be roughly translated as "treaties shall be complied with," describes a significant general principle of international law—one that underlies the entire system of treaty-based relations between sovereign states.

The duty to perform one's solemn obligations is not something unique to international law and the law of treaties. A similar principle can be found in the contract law of many domestic legal traditions throughout the globe. Every agreement of a legal nature, domestic or international, whether it is a contract between individuals or a treaty between states, presupposes that in concluding the agreement the parties acted with the intention to abide by its provisions.

State practice over the centuries has recognized the fundamental significance of pacta sunt servanda as a principle or rule of international law. What was originally an uncodified rule based on customary practice began to be expressed in writing in the mid-nineteenth and early twentieth centuries through multilateral declarations, such as the Declaration of London of 1871, and decisions of international arbitral bodies. It was also incorporated into the Covenant of the League of Nations and the Charter of the United Nations, although neither document referred to the principle by name.

Explicit reference to pacta sunt servanda in an international legal instrument was first made when drafting the Vienna Convention on the Law of Treaties of 1969 (VCLT). This document, which is widely considered to be the most definitive authority on treaty law and practice, makes reference to pacta sunt servanda as a universal rule in its Preamble and also devotes a brief article to its definition.

Article 26 of the VCLT states, "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith."

The good faith element of this principle suggests that states should take the necessary steps to comply with the object and purpose of the treaty. States may not invoke restrictions imposed by domestic law as good reason for not complying with their treaty obligations provided the instrument was duly ratified by competent authorities and in accordance with constitutional and statutory requirements.

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